1–30–97
Vol. 62 No. 20
Pages 4429–4630

federal register

Thursday
January 30, 1997

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on ***GPO Access*** products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the Federal Register shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the Federal Register on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the Federal egister paper edition is $555, or $607 for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530 1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

NOW AVAILABLE ONLINE

The January 1997 Office of the Federal Register Document Drafting Handbook

Free, easy, online access to the newly revised January 1997 Office of the Federal Register Document Drafting Handbook (DDH) is now available at:

http://www.nara.gov/nara/fedreg/ddh/ddhout.html

This handbook helps Federal agencies to prepare documents for publication in the Federal Register.

For additional information on access, contact the Office of the Federal Register's Technical Support Staff.

Phone: 202–523–3447

E-mail: info@fedreg.nara.gov

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulation.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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.

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

WASHINGTON, DC

WHEN: February 18, 1997 at 9:00 am

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

RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 20
Thursday, January 30, 1997

Agriculture Department
See Forest Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4518

Coast Guard
NOTICES
Meetings:
Lower Mississippi River Waterway Safety Advisory Committee, 4566
Pollution:
Prevention through people strategic plan; meetings and comment request, 4567–4568

Commerce Department
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Fiji, 4519–4520

Commodity Futures Trading Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4520
Meetings; Sunshine Act, 4520–4521

Defense Department
See Navy Department
RULES
Third party collection program and Comptroller of Defense Department organizational charter; CFR parts removed, 4458

Education Department
NOTICES
Meetings:
Federal Interagency Coordinating Council, 4521

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Chromium emissions from hard and decorative chromium electroplating and anodizing tanks, 4463–4465
Air pollution; standards of performance for new stationary sources:
Municipal waste combustors—
Central Wayne Energy Recovery, L.P., MI, 4463
Air quality implementation plans; approval and promulgation; various States:
Colorado, 4459–4463
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Colorado, 4514–4515
Massachusetts, 4505–4514
NOTICES
Air pollution control; new motor vehicles and engines:
Urban buses (1993 and earlier model years); retrofit/rebuild requirements; equipment certification—
Johnson Matthey Inc., 4528–4531
Brownfields; comfort/status letters issuance; policy statement, 4624–4630
Meetings:
Environmental Financial Advisory Board, 4531–4532

Farm Credit Administration
RULES
Farm credit system:
Capital adequacy and customer eligibility, 4429–4451

Federal Bureau of Investigation
NOTICES
Meetings:
DNA Advisory Board, 4552

Federal Communications Commission
RULES
Radio stations; table of assignments:
Arizona, 4465–4466
PROPOSED RULES
Radio stations; table of assignments:
Tennessee, 4515
Wyoming, 4515–4516

Federal Deposit Insurance Corporation
NOTICES
Sale of U.S. Government guaranteed loans and sale premiums; policy statement rescission, 4532

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 4532

Federal Energy Regulatory Commission
PROPOSED RULES
Practice and procedure:
Hydroelectric projects; relicensing procedures; rulemaking petition, 4494
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4521–4522
Electric rate and corporate regulation filings:
Heartland Energy Services, Inc., et al., 4525–4528
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 4522
Algonquin Gas Transmission Co., 4522–4523
Columbia Gas Transmission Corp., 4523
Mississippi River Transmission Corp., 4523
National Fuel Gas Supply Corp., 4523–4524
Pacific Northwest Generating Cooperative, 4524
Questar Pipeline Co., 4524
Transcontinental Gas Pipe Line Corp., 4524–4525
Williams Natural Gas Co., 4525
Wyoming Interstate Co., Ltd., 4525

Federal Maritime Commission
NOTICES
Agreements filed, etc., 4532–4533

Federal Railroad Administration
NOTICES
Emergency orders:
Northwestern Pacific Railroad, 4568–4569
Safety bulletins:
Safety practices for locomotives equipped with emergency multiple-unit (MU) fuel line cut-off devices, 4569

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 4533
Formations, acquisitions, and mergers, 4533–4534
Nonbanking activities, 4534–4535
Permissible nonbanking activities, 4535

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 4535

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting and conservation stamp (Federal Duck Stamp) contest, 4516–4517
NOTICES
Endangered and threatened species:
Emergency exemptions—
Neonate margay, 4548
Endangered and threatened species permit applications, 4548
Grants and cooperative agreements; availability, etc.:
North American wetlands conservation projects; small grants proposals request, 4548–4549

Food and Drug Administration
NOTICES
Meetings:
Advisory committees, panels, etc., 4535–4537
Antiviral Drugs Advisory Committee, 4537–4538
Health professional, consumer, and patient advocacy organizations representatives, 4538

Forest Service
NOTICES
Meetings:
National Urban and Community Forestry Advisory Council, 4518–4519

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4538–4539

Health Resources and Services Administration
NOTICES
Grant and cooperative agreement awards:
Association of Academic Health Centers, 4539

Indian Affairs Bureau
PROPOSED RULES
Economic enterprises:
Indian business development program, 4497–4499

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Health Insurance Portability and Accountability Act of 1996:
Individuals losing United States citizenship; list, 4570

Justice Department
See Federal Bureau of Investigation
NOTICES
Pollution control; consent judgments:
Braselman Corp. et al., 4551

Land Management Bureau
NOTICES
Meetings:
Resource advisory councils—
Utah, 4549–4550
Organization, functions, and authority delegations:
Needles Resource Area, CA; office hours change, 4550
Realty actions; sales, leases, etc.:
Arizona, 4550
Survey plat filings:
Idaho, 4550

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Gulf of Mexico OCS—
Oil and gas operations, 4550–4551

National Aeronautics and Space Administration
RULES
Acquisition regulations:
FAR supplement (NFS); rewrite, 4466–4492
NOTICES
Meetings:
International Space Station Advisory Committee, 4552

National Institute of Standards and Technology
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4519

National Institutes of Health
NOTICES
Genetic Testing Task Force; proposed recommendations; meeting and comment request, 4539–4547

National Oceanic and Atmospheric Administration
RULES
Ocean and coastal resource management:
Marine sanctuaries—
Florida Keys National Marine Sanctuary, 4578–4622
PROPOSED RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; correction, 4576

Navy Department
NOTICES
Meetings:
Planning and Steering Advisory Committee, 4521

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4552–4553
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 4553

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 4553

Postal Service
RULES
Board of Governors bylaws:
Sunshine Act practices, 4458–4459
Practice and procedure:
Pandering Advertisements Statute; administrative violation cases, 4459

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Saint Lawrence Seaway Development Corporation
NOTICES
Meetings:
Advisory Board, 4569–4570

Securities and Exchange Commission
NOTICES
Options price reporting authority, 4553–4555
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 4555–4556
Delta Clearing Corp., 4557–4561
Depository Trust Co., 4561–4562
National Association of Securities Dealers, Inc., 4562–4564
Pacific Stock Exchange, Inc., 4564–4566

Social Security Administration
PROPOSED RULES
Social security benefits:
Federal old age, survivors and disability insurance—Application of State law in determining child relationship, 4494–4497

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4547–4548

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Texas, 4451–4458
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Arkansas, 4499–4501
Maryland, 4502–4504
Pennsylvania, 4504–4505

Surface Transportation Board
RULES
Nonrail licensing procedures:
Water carriers; extension of operations; CFR part removed, 4492–4493

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Railroad Administration
See Saint Lawrence Seaway Development Corporation
See Surface Transportation Board
NOTICES
Meetings:
White House Commission on Aviation Safety and Security, 4566

Treasury Department
See Internal Revenue Service

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
North African, Middle Eastern, and South Asian foreign language training, area studies, and research; U.S. graduate students and postdoctoral scholars, 4570–4572
Slovenia; telecommunications training programs, 4572–4575

Separate Parts In This Issue

Part II
Department of Commerce, National Oceanic and Atmospheric Administration, 4578–4622

Part III
Environmental Protection Agency, 4624–4630

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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.

CFR PARTS AFFECTED IN THIS ISSUE

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

12 CFR
613.....4429
614.....4429
615.....4429
618.....4429
619.....4429
620.....4420
626.....4429

15 CFR
922.....4578
929.....4578
937.....4578

18 CFR
Proposed Rules:
4.....4494
375.....4494

20 CFR
Proposed Rules:
404.....4494

25 CFR
Proposed Rules:
286.....4497

30 CFR
943.....4451
Proposed Rules:
904.....4499
920.....4499
938.....4499

32 CFR
220.....4458
352.....4458

39 CFR
7.....4458
963.....4459

40 CFR
52.....4459
60.....4463
63.....4463
Proposed Rules:
52 (2 documents) 4505
4514

47 CFR
73.....4465
Proposed Rules:
73 (2 documents) 4515

48 CFR
1805.....4466
1815.....4466
1831.....4466
1834.....4466
1835.....4466
1836.....4466
1837.....4466
1839.....4466
1841.....4466
1852.....4466
1870.....4466
1871.....4466
1872.....4466

49 CFR
1166.....4492

50 CFR
660.....4576
Proposed Rules:
91.....4516

Rules and Regulations

Federal Register
Vol. 62, No. 20
Thursday, January 30, 1997

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.

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, 615, 618, 619, 620, and 626

RIN 3052–AB10

Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Definitions; Disclosure to Shareholders; Nondiscrimination in Lending; Capital Adequacy and Customer Eligibility

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) through the FCA Board (Board) adopts amendments (final rule) to the current regulations governing the capital adequacy provisions and the customer eligibility provisions for Farm Credit System (Farm Credit, FCS, or System) institutions. This rule adds core surplus and total surplus standards for banks, associations, and the Farm Credit Leasing Services Corporation (Leasing Corporation); adds a collateral ratio for banks; and adds procedures for setting higher capital standards for individual institutions and for issuing capital directives, when warranted. The rule also incorporates recent amendments to the Farm Credit Act of 1971, as amended (Act), which govern the eligibility rules for lending under title III of the Act and provide Farm Credit banks and associations with new authorities to participate with non System lenders in loans to similar entities. The final rule eliminates restrictions in the current eligibility regulations that are not required by the Act and makes other technical, clarifying, and conforming changes. The final rule relocates the nondiscrimination in lending regulations to a new part without change.

DATES: This regulation shall become effective 30 days after publication in the Federal Register during which either or both houses of Congress are in session. Notice of the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Policy Analyst, and John J. Hays, Policy Analyst, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Rebecca S. Orlich, Senior Attorney, and Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The FCA proposed amendments to the capital provisions of its regulations for FCS institutions on July 25, 1995 (60 FR 38521) and to the customer eligibility provisions on September 11, 1995 (60 FR 47103). In response to comments received, the FCA combined the two proposals and published proposed amendments to the capital adequacy and customer eligibility provisions of its regulations for Farm Credit institutions on August 13, 1996 (reproposed rule). See 61 FR 42092. The 30-day comment period expired on September 12, 1996.

I. Summary of the Changes in the Final Rule

A. The capital provisions of the final rule contain the following changes from the reproposed rule:

1. Associations may include in their core surplus allocated equities that are includible in their total surplus and that are not scheduled to be revolved in the next 3 years. Such equities may comprise up to 2 percentage points of an association's 3.5-percent minimum core surplus to risk-adjusted assets requirement, with the remaining 1.5 percent in unallocated surplus and includible perpetual stock.

2. Banks for cooperatives (BCs) and agricultural credit banks (ACBs) may include nonqualified allocated equities that are issued to non-System entities and that do not have an established plan or practice of revolvement. Such equities may comprise up to 2 percentage points of a BC's or ACB's 3.5-percent minimum core surplus requirement, with the remaining 1.5 percent in unallocated surplus and includible perpetual stock.

3. If specifically provided for in an institution's capital adequacy plan, the institution may retire or cancel purchased and allocated equities includible in core surplus for application against the indebtedness on a defaulted loan without causing similar remaining equities to be excluded from the core surplus ratio. The institution may also pay out allocated equities in the event of the death of a former borrower whose loan has been repaid. In both cases, the institution board must determine that retirement or revolvement is in the best interest of the institution.

4. Retirement of less than an entire class or series of equities includible in core surplus, other than in the circumstances described in item 3 above, will result in the disallowance of remaining similar equities from core surplus.

5. If approved by the FCA, a capital instrument or a particular balance sheet account issued to or related to another System institution may be included in an institution's core or total surplus.

6. The Leasing Corporation may include its C Stock issued to Farm Credit banks in the total surplus ratio.

B. The eligibility provisions applicable to title I and title II lenders incorporate the following changes from the reproposed rule:

1. The final regulation retains the existing definition of *bona fide* farmer or rancher in § 613.3010(a). This and the other definitions in § 613.3010 are redesignated as § 613.3000(a) in order to replace the reproposed definitions. The reproposed definitions for agricultural assets and agricultural land, § 613.3000(a)(1) and (2), are withdrawn. The existing definition of agricultural land is retained without change in § 619.9025. Reproposed § 613.3000(d), addressing limitations on financing a farmer's other credit needs under the reproposed definitions, is also withdrawn.

2. Existing § 613.3005(a) is retained as final § 613.3005 to determine the scope of financing for farmers, ranchers, and producers or harvesters of aquatic products.

3. The final rule offers some flexibility in the use of the 75th percentile of local housing values to establish what constitutes moderately priced housing. It requires each FCS institution to support its determination with appropriate documentation whenever the institution adopts a value above the 75th percentile of housing values in the rural area where it is located.

II. Public Comments Received

The FCA received 1591 comment letters in response to the reproposed rule concerning capital adequacy and customer eligibility provisions. There were 1079 comments addressing the customer eligibility rules and 580 comments addressing the reproposed capital adequacy provisions.[1]

The FCA received 881 comments from System institutions and their members/borrowers, including a comment letter from the System's Presidents' Finance Committee, which reflected the views of System banks and associations (System joint comment) concerning the capital adequacy rules, as well as a letter from the Farm Credit Council (FCC), also on behalf of the System institutions, on the customer eligibility provisions. Of the remaining comments, 723 were from commercial banks, 26 from trade associations, 22 from members of Congress who transmitted constituent letters, and three from State government agencies. The national trade associations, in addition to the FCC, that commented included: the American Bankers Association (ABA), the Independent Bankers Association of America (IBAA), the Credit Union National Association (CUNA), and the National Farmers Union (NFU). The States from which banking chapters and affiliates of their national associations submitted comments included Virginia, Wisconsin, Nebraska, Pennsylvania, Arizona, California, Alaska, Hawaii, Montana, New Mexico, Nevada, Oregon, Utah, Washington, Idaho, Colorado, Michigan, New York, Indiana, Georgia, Maine, Louisiana, and South Dakota. In addition to the written comments received, a group of System representatives made an oral presentation of its views to Agency staff concerning the capital adequacy provisions.

III. The Final Rule

After carefully considering the comments received on the reproposed rule and further deliberation, the FCA adopts a rule governing capital adequacy and customer eligibility for FCS financing. The FCA responds to the specific concerns of the commenters as it explains the provisions of the rule.

A. Capital Adequacy Provisions

Of the 580 written comments received on the capital provisions, six were from System banks (AgFirst FCB (two letters), Western FCB, AgriBank FCB, CoBank ACB, and St. Paul BC), one was from the Leasing Corporation, 35 were from System associations, 532 were from borrowers/shareholders of several agricultural credit associations (ACAs), one was from the System's Presidents' Planning Committee on behalf of System institutions (System joint comment), four were from various State and national cooperative councils, and one was from the ABA on behalf of its commercial bank members.

Responses to the capital provisions varied widely. Of the five System banks that commented, one bank fully supported the reproposal and urged the FCA not to diminish required levels by lowering ratios or widening the definition of eligible capital. Two System banks supported the reproposal as revised by minor changes suggested in the System joint comment. Those changes are more fully described below. The other two System banks suggested changes to the reproposal primarily as it affected associations operating on a Subchapter T basis for tax purposes. Of the System associations that submitted comments, a few supported the reproposal, but the majority asked for changes in the core surplus requirement. Likewise, the cooperative councils and the association borrowers opposed the core surplus ratio components as applied to associations. The ABA commented that it supported the stiffening of capital requirements for System institutions and offered a general opinion that the reproposal was not stringent enough.

1. Core Surplus Ratio Capital Standard

The majority of the comments on capital pertained to the core surplus ratio in the reproposed rule. A System bank, the Leasing Corporation, and several associations supported the core surplus ratio as reproposed, and other System institutions generally supported the ratio with minor revisions.

Many other respondents, including System associations, made the same criticisms of the core surplus ratio that they had made of the unallocated surplus ratio in the originally proposed capital regulations. They asserted that the core surplus ratio was contrary to cooperative principles, unfairly differentiated between unallocated surplus and allocated surplus, and discouraged institutions from operating as Subchapter T cooperatives. They stated their belief that an institution with allocated equities in addition to a minimum level of unallocated surplus was a stronger institution than one with the same amount of unallocated surplus but no allocated equities. For a detailed description of these comments, see 61 FR 42092, 42094 (Aug. 13, 1996). Most of these respondents did not address specifically the inclusion of nonqualified allocated equities in the core surplus ratio.

A System bank that did address the inclusion of nonqualified allocated equities disagreed with the FCA's statement that inclusion of such equities would eliminate most of the disincentives to operate on a Subchapter T basis and stated that single taxation is an extremely important tool for managing tax liabilities on association earnings.

An association objected to the requirement that associations deduct the net investment in the affiliated bank from the core surplus ratio. Another association stated that an association should not have to deduct this investment unless the bank does not meet its minimum capital requirements.

A respondent questioned the meaning of the statement in the reproposal preamble that the FCA expected a ''healthy portion'' of core surplus to be made up of unallocated surplus. *See* 61 FR 42095–96 (Aug. 13, 1996). The respondent stated that ''healthy'' appeared to be a subjective evaluation and asserted that ''[t]he requirement of a 'healthy' sum of unallocated surplus runs contrary to the cooperative nature of the System.''

Two System associations stated that the risk monitoring systems already in place—the Farm Credit System Insurance Corporation, the Market Access Agreement, the Contractual Interbank Performance Agreement, general financing agreements, and ''a very aggressive regulator''—were sufficient to control risk.

A System bank recommended that the core surplus of associations be calculated by means of two separate ratios: first, measure unallocated retained earnings (URE) with no deduction for the investment in the bank; second, measure total surplus with a deduction for the investment in the bank. The bank pointed out that ''[t]he only situation in which the member's investment would be impaired at the point in which losses exceeded association unallocated surplus *net of its investment in the bank*

[1] The total number of comments received on the individual provisions of the final rule does not total 1591 because several commenters responded to both capital and customer provisions in a single comment letter.

would be one in which the association's investment in the bank was impaired at the same time.'' The bank also stated that tax considerations, not capital requirements, should be the basis on which an institution should decide whether to allocate equities on a nonqualified or a qualified basis. Several associations recommended that the core surplus for associations be calculated on a more broadly defined basis by including all permanent capital less the investment in the bank.

The System, in its joint comment, recommended that the FCA permit a call on preferred stock when a bank is overcapitalized or in a declining rate environment. It also recommended that the FCA include in core surplus, on a case-by-case basis, newly developed or modified equities or accounts held by other System institutions.

One commenter requested that the FCA permit revolvements of nonqualified allocated equities as long as the revolvements do not result in failure to meet the core surplus requirement. Another commenter stated that it agreed with the FCA's rationale for including nonqualified allocated equities in core surplus but suggested that redemptions be permitted when a borrower dies or defaults on a loan. The commenter also stated that nonqualified allocations between System institutions ought to be includible by one institution in core surplus and suggested that the allocations be included in the core surplus of the issuing institution.

In response to the comments, and upon further deliberation about the components and quality of core surplus, the FCA has made several changes to the core surplus requirement in the final rule. The principal change is that associations with allocated equities, which are primarily associations that operate as Subchapter T cooperatives, may include certain longer-term qualified as well as nonqualified allocated equities. However, allocated equities may comprise no more than 2 percentage points of the association's minimum 3.5-percent core surplus requirement. Includible longer-term equities are allocated equities not subject to a revolvement plan or subject to a revolvement plan of at least 5 years and not scheduled for distribution during the next 3 years. The remaining 1.5 percentage points of the minimum core surplus requirement must be made up of unallocated retained earnings and perpetual stock not subject to a revolvement plan or practice.

This decision reflects the FCA's judgment that a formula including allocated equities that are not scheduled for retirement within the next 3 years provides a method for achieving a stable capital base for associations without discouraging patronage distributions. Longer-term allocated equities, while they may not be perpetual in nature, do provide important capital protection for as long as they are held, and an institution's board can delay a scheduled distribution when it is in the best interest of the institution. By counting allocated equities only when they are not within 3 years of revolvement, institutions are less likely to have to interrupt scheduled revolvements to meet their capital standards in times of adversity because they have 3 years in which to adjust continuing allocations or take other protective measures. Similarly, if an institution suffers because many of its borrowers are experiencing adverse economic circumstances, a sufficient amount of unallocated surplus will better enable the institution to continue to make planned distributions during the next 3 years, at a time when its borrowers may need cash distributions most. In addition, permitting an association to count both qualified and nonqualified allocations in the core surplus ratio gives an association flexibility to select which type of allocation to make based primarily on business considerations rather than regulatory considerations.

For the BC and any ACB which, like Subchapter T associations, also have equities allocated to non-System borrowers, the Agency decided not to allow inclusion in core surplus of any qualified allocated equities or of nonqualified allocated equities scheduled for revolvement for several reasons.[2] Such banks have higher lending limits—from 35 to 50 percent of the lending limit base for certain BC loans compared to a 25-percent limit for all other Farm Credit institutions. The BC and any ACB carry greater interest rate risk than associations and carry certain forms of operational risk from which associations are largely insulated. Unlike associations, these banks are jointly and severally liable on Systemwide obligations. In addition, the existing BC and ACB have made a significant portion of their credit extensions to relatively few borrowers, a situation that results in a concentration of risk. Finally, the BC and ACB have only the single exclusion of qualified and revolving nonqualified allocated equities from their core surplus ratio, whereas associations must also deduct their net investment in their affiliated bank. Therefore, the FCA has determined that it is appropriate that such banks maintain a core surplus ratio of at least 3.5 percent, comprised of unallocated surplus and nonqualified allocated equities with no plan or practice of retirement. Nonqualified allocated equities may comprise no more than 2 percentage points of the institution's minimum 3.5-percent core surplus requirement. As with associations, the remainder must be comprised of unallocated retained earnings and perpetual stock.

When an institution's ratio of unallocated surplus together with any perpetual stock includible in core surplus to risk-adjusted assets amounts to less than 1.5 percent, the institution may not count more than 2 percentage points of allocated equities in determining compliance with the 3.5-percent core surplus requirement. For example, if an institution's unallocated surplus and includible perpetual stock were 1.4 percent of risk-based assets, and its ratio of long-term allocated equities were 5 percent, its core surplus ratio would be 3.4 percent, because allocated equities could be counted only up to 2 percentage points. If the institution's ratio of unallocated surplus and perpetual stock were 1.6 percent and its ratio of long-term allocated equities were 5 percent, however, its core surplus ratio would be 6.6 percent. In this instance, the entire amount of long-term allocated equities would be included in the core surplus ratio because at least 1.5 percent of the institution's minimum requirement was comprised of unallocated surplus and perpetual stock. The FCA notes that the restriction on the use of allocated equities in the computation of the core surplus ratio applies only to the components in the computation of the core surplus ratio and is not intended to limit the use of such allocated equities in building and maintaining other required capital levels.

In establishing the minimum core surplus requirement at 3.5 percent, the FCA expects institutions to treat the core surplus requirement and its components as a regulatory minimum and to establish a target or goal for adequate capital based on their particular circumstances. There may be circumstances where the FCA considers the institution's component levels of surplus to be inadequate, even when its core surplus ratio is at or above 3.5 percent (because the operations of the institution are of higher risk), and may take supervisory action, as warranted.

The final rule permits all institutions to retire equities and apply the proceeds against indebtedness on a defaulted loan

[2] This same rule by its language also applies to the FCBs; however, the effect of this rule on FCBs is expected to be minimal.

without disallowance of remaining equities of the same class or series from treatment as core surplus, subject to the following conditions: (1) The institution must specifically provide for such retirements in the capital adequacy plan approved by its board of directors and the circumstances under which they may occur; (2) the institution must charge off an amount of the indebtedness on the loan equal to the amount of the equities that are retired or canceled; and (3) the institution board must determine that each such retirement is in the best interest of the institution. Retirable equities include purchased stock as well as allocated stock and surplus. The Agency made this change to accommodate foreclosure laws of States that preclude the recovery of a deficiency in certain situations. In these cases, it may be more advantageous to the institution to retire a borrower's equities. In other cases, it will be in the best interest of the institution not to retire equities. Institutions are required to make this determination before the equities are retired.

The final rule also permits institutions to retire allocated stock and equities in the event of the death of a holder of such equities who did not have a loan outstanding with the institution at the time of his or her death, without disallowing remaining equities from treatment as core surplus, provided that the institution's capital adequacy plan specifically authorizes such retirements and that the institution determines that these retirements are in the best interest of the institution. This provision enables institutions to make retirements to help liquidate a former borrower's estate, especially in cases where the allocated equities may not be transferable. The provision, however, does not apply to retirements of purchased stock, which the statute requires to be transferable. Title to such stock and the accruing benefits thereto, including dividends, can be transferred by the estate executor to the heirs of the former borrower's estate. Although these provisions allow an institution to retire equities in these circumstances without disqualifying equities of the same class, they do not relieve the institution of its obligation to meet its regulatory capital standards and to maintain such higher levels of capital as may be needed in its particular circumstance.

The FCA has deleted from the final rule provisions that would have enabled an institution to retire a *pro rata* amount of a class or series of stock or equities without causing the remaining class or series of stock or equities to be disallowed from treatment as core surplus. The Agency reconsidered those provisions and determined that the partial retirements or revolvements would raise an implication that the equities are not considered to be a permanent source of capital by the institution. If partial retirements of includible perpetual stock were commonplace, the FCA believes that this practice would undermine stockholders' perception of the perpetual character of the stock or equities. Therefore, if an institution retires includible stock or equities other than in connection with a section 4.14B restructuring or the death or default of a borrower, the remaining equities of the same class or series will be disallowed from treatment as core surplus.

The FCA has expanded a reproposed provision, permitting inclusion of a newly developed or modified capital instrument or particular balance sheet account with FCA approval, to include existing capital instruments and balance sheet accounts as well. Existing equities issued or allocated to other System institutions will continue to be excluded from an institution's core surplus as a general principle. But the FCA will consider including existing equities as well as any newly developed or modified capital instrument or a particular balance sheet account related to another System institution in core surplus on a case-by-case basis. The FCA is not presently aware of any existing equities held by other System institutions that it believes would be appropriate to include in an institution's core surplus, but it may consider the appropriateness of including any such equities in the future.

The FCA did not make any other changes recommended by commenters to the core surplus ratio. The final rule continues to require associations to deduct the net investment in the bank from core surplus, for the reasons set forth in the preamble to the reproposed rule at 61 FR 42096 (Aug. 13, 1996). With respect to the comment that current risk monitoring systems are sufficient to control risk, the FCA was not convinced that the current risk monitoring systems assure that institutions have adequate high quality capital. The FCA believes this final rule does provide such assurances. The suggestion that the core surplus ratio for associations be replaced by ratios that separately measure local surplus and unallocated surplus was rejected because compliance with the ratios could be achieved by an association that has no local unallocated surplus (and equivalent perpetual equities) and, as the commenter observes, would not assure sufficient capital in the event that the bank is financially stressed at the same time the affiliated association is stressed. For a fuller explanation of the need for local unallocated surplus, see 60 FR 38523 (July 25, 1995). With respect to the suggestion in the System joint comment that a call on preferred stock would be prohibited, the FCA notes that redemption of perpetual preferred stock was neither strictly prohibited in the reproposed rule nor prohibited in the final rule.

In the final rule, the core surplus ratio must be calculated by the institution as of each monthend. A summary of the core surplus computation follows:

The ratio numerator:

Undistributed earnings/unallocated surplus (as defined in the FCA Call Report instructions) less: for associations only, the net investment in its affiliated bank, which is—

Total investment in a System bank:

Less: Investment in association by such bank, up to an amount equal to the association's investment in the bank;

Less: Agency/servicing investment in such bank;

Less: Participation investment in such bank;

Plus: Perpetual common or noncumulative preferred stock held by non-System entities and not purchased as a condition of obtaining a loan, provided that the institution has no established plan or practice of retiring the stock;

Plus: any other equities or accounts approved by the FCA for inclusion in core surplus;

Plus: for banks only, nonqualified patronage allocations held by persons or entities other than System institutions, provided that the institution has no established plan or practice of retiring such allocations;

Plus: for associations only, nonqualified and qualified patronage allocations held by persons or entities other than other System institutions, provided that either the allocations are subject to a revolvement plan of at least 5 years and will not be distributed within the next 3 years, or the institution has no established plan or practice of retiring such patronage;

Less: investments in the Leasing Corporation and goodwill as required in the computation of the institution's permanent capital ratio (§ 615.5210(e)(6) and (7)); Divided by—

The ratio denominator:

Risk-adjusted asset base per the permanent capital regulations.

2. Total Surplus Ratio Capital Standard

Commenters raised two issues with regard to the reproposed total surplus

ratio: the treatment of the Leasing Corporation's C Stock and the inclusion of certain subordinated debt. The preamble to the reproposed regulations stated that the Class C Stock issued by the Leasing Corporation could not be included in the Leasing Corporation's total surplus because the level of stock fluctuates, somewhat similarly to borrower stock, based on lease volume. The Leasing Corporation commented that its C Stock should be included in the total surplus calculation because it is held by System banks, which also fund the leases. Because a customer of the Leasing Corporation has no equity at risk in the corporation, any decision either to conduct additional business with the corporation or to terminate existing leasing relationships does not involve a consideration by the customer of the capital level of the corporation. Therefore, the risk of borrower flight based on concerns about stock impairment is non-existent.

The FCA concludes that the basic characteristics of the C Stock have many similarities to other FCS institutions' stock and equities that are includible in total surplus. Therefore, the C Stock should be included in the Leasing Corporation's total surplus computation.

In its joint comment, the System requested that subordinated debt with characteristics of preferred stock be included in permanent capital and total surplus, on the ground that commercial banks and thrifts are permitted to include this type of subordinated debt in their Tier 2 capital. The issue of the treatment of subordinated debt in any capital ratios for System institutions was not addressed in the reproposal or in the 1995 capital proposal, and the FCA believes that it would be inappropriate to include this in the final rule. The Agency is considering this issue as part of the next phase of its review of the capital regulations.

Upon reaching these conclusions, the FCA determines the total surplus ratio will be calculated by the institution as of each month end, with a minimum requirement of 7 percent. A summary of the computation is as follows:

The ratio numerator:

Undistributed earnings/unallocated surplus per FCA Call Report;

Plus: certain perpetual common or noncumulative perpetual preferred stock held by non-System entities and not purchased as a condition of obtaining a loan;

Plus: certain nonqualified and qualified allocated equities with revolvement cycles, if any, of at least 5 years;

Plus: term stock with an original maturity of at least 5 years (reduced by 20 percent per year during the last 5 years of its term);

Plus: any other equities or accounts approved by the FCA for inclusion in total surplus;

Less: any equities or accounts required by the FCA to be deducted from total surplus;

Less: any deductions for goodwill and investments in the Leasing Corporation as required in the computation of the institution's permanent capital ratio pursuant to § 615.5210(e) (6) and (7);

Less: for associations only, an amount equal to the amount of allocated bank equities counted as permanent capital by the bank;

Less: for banks only, an amount equal to the amount of bank equities counted as association permanent capital.

Divided by—

The ratio denominator:

Risk-adjusted asset base per the permanent capital regulations.

3. Collateral Ratio Capital Standard for Banks

A System bank opposed a collateral ratio that excludes allocated capital counted by associations for two reasons: the allotment agreement does not change the actual liquidity position of the bank, and the deduction appears to be premised on the belief that the allotment agreements are enforceable and that every association will call on the bank to retire such capital at the same time.

As explained in the preamble to the reproposal, the exclusion of allocated capital counted as association permanent capital is intended to eliminate the double-leveraging of shared capital and is not based on assumptions about the enforceability of the allotment agreements. Inclusion of this capital would enable banks and associations to double-leverage the same capital for the permanent capital and collateral ratios. The FCA has decided to adopt the collateral ratio as reproposed without changes for the reasons expressed here and as found in 61 FR 42097–98 (Aug. 13, 1996). Under the final rule, the net collateral ratio is calculated as follows:

The ratio numerator is a bank's net collateral, which equals:

A bank's total eligible collateral as defined by § 615.5050 (except that eligible investments as described in § 615.5140 are to be valued at their amortized cost),

Less: an amount equal to that portion of the allocated investments of affiliated associations that is not counted as permanent capital of the bank.

Divided by—

The ratio denominator, which equals:

The bank's total liabilities.

4. Borrower Stock Retirement Provisions

The FCA received no comments on the reproposal's provisions enabling institutions to delegate the retirement of borrower stock under certain conditions. However, the final rule clarifies the board's obligation to determine that the institution's capital position will remain adequate after any stock retirements made under delegated authority.

5. Individual Institution Capital Ratios and Capital Directives

The FCA received no comments on the reproposal's provisions establishing procedures for setting individual institution capital ratios and issuing capital directives. The FCA adopts these provisions without change.

6. Other Capital Issues

The System, in its joint comment, recommended that the existing permanent capital regulations be harmonized with the reproposal to include term preferred stock in permanent capital. The FCA agrees that term preferred stock, which is includible in total surplus, should also be permanent capital on the same basis as it is considered to be total surplus. That is, the stock must have an original maturity of 5 years or more, and in each of the last 5 years before maturity will be counted in permanent capital at a discount of 20 percent. Thus, at the beginning of 5 years before maturity the discount will be 20 percent; at the beginning of 4 years prior to maturity the discount will be 40 percent; and so forth until there is a 100-percent discount at the beginning of one year prior to maturity. The FCA has added a stipulation that the institution must have the option to defer payment of dividends on such preferred stock. This qualification is consistent with the qualification placed on the type of preferred stock that may be included in the regulatory capital (Tier 2) of national banks.

In addition, the FCA added language to the definitions of total surplus and core surplus to clarify that deductions required in the computation of an institution's permanent capital ratio must also be made in the computation of the institution's surplus ratios. Goodwill and the investment by a Farm Credit bank in the Leasing Corporation must be deducted from a bank's surplus ratios just as they are deducted from the bank's permanent capital.

Several System associations inquired regarding the inclusion in core surplus of a tax-deferred asset representing taxes

paid on nonqualified allocated equities. The FCA notes that, based on generally accepted accounting principles (GAAP), in circumstances where redemption is sufficiently ascertainable, the tax benefits associated with nonqualified allocations may be recorded as an asset. In the final rule, this tax-deferred asset is includible in the core surplus of institutions if the related nonqualified allocated equities are included in core surplus. The FCA notes that it is presently reviewing the treatment of this and all other types of tax-deferred assets in the minimum capital requirements and will address this issue in the next phase of its review of the capital regulations.

A System association inquired whether a purchase of stock by a System bank in its affiliated association would have the effect of reducing an association's ''net investment in the bank,'' thereby increasing the association's core surplus correspondingly. The FCA agrees that this is a correct interpretation of the reproposal and notes that the Agency would treat such an investment as financial assistance or paid-in capital subject to prior FCA approval under § 615.5171.

7. Basis for Conclusions and Positions Taken in the Final Capital Adequacy Provision

The FCA believes that the changes in the final rule are consistent with its views of the purposes of capital and the need for high quality capital, as set forth in the supplementary information to the originally proposed capital amendments. *See* 60 FR at 38522–27 (July 27, 1995). The FCA incorporates that information herein by reference. At that time, the Agency explained its position that a mixture of capital components is necessary to achieve a sound capital structure and that each institution should have a minimum amount of secure capital, exclusive of borrower stock, that is not at risk at another System institution. Compliance with the permanent capital and total surplus ratios may be achieved with a variety of components—most types of capital meet the definition of permanent capital, and the total surplus measurement includes both perpetual and preferred stock, as well as both unallocated and allocated surplus. The need for a minimum amount of secure capital is addressed by the core surplus ratio, which generally excludes capital at risk at other System institutions.

The additions made to the components of core surplus in the final rule reflect the FCA's recognition that some equities allocated to non-System entities are close to unallocated surplus as a source of quality capital. Nonqualified allocated equities with no plan or practice of retirement are considered highly stable and have low borrower expectations of distribution. Revolving allocated equities, being somewhat less stable, are only partially included, and the associations that may include them are required to maintain a positive level of local unallocated surplus in order to meet the 3.5-percent requirement.

The FCA believes that the core and total surplus and bank collateral standards embody the principles set forth in the 1988 international Basle Accord that provide for minimum levels of risk-based high quality and supplementary capital. Capital standards for commercial banks and thrifts were adopted by their Federal banking regulators in 1989 based on Basle Accord recommendations, and subsequent studies have shown that such standards, which also include a leverage ratio, are an improvement over the previous flat-rate standards alone.[3] In the FCA's view, the capital requirements in the final rule in their overall effect are very similar to the standards applied to the commercial banks and thrifts.

The FCA believes that the capital provisions in the final rule establish standards that encourage the building of a sound capital structure in System institutions, which will improve the likelihood of an institution's survival during periods of economic stress and thereby improve the safety and soundness of the System as a whole. The FCA believes that these regulations provide a meaningful measure of capital adequacy and are appropriate for all System institutions to which they apply.

B. Customer Eligibility Provisions

1. General Comments

Generally, FCS institutions and their borrowers endorsed the FCC's comment letter, which favored the reproposed rule but recommended certain modifications. One State agency supported the reproposed rule while another opposed it. All other non-System commenters and one FCS borrower opposed the reproposed regulations. Many commercial bank commenters and their trade associations urged the FCA to abandon all efforts to amend the existing eligibility regulations.

Some commenters suggested that the FCA postpone rulemaking action on customer regulations until such time that Congress might address this issue. The FCA has consulted with the Senate and House Agriculture Committee staff about these customer regulations during the past 6 months. Based on these discussions and comments received during two public comment periods, the FCA has determined that it is appropriate to proceed with the final customer regulations.

While many comments focused on specific provisions of the reproposed regulations, other comments raised public policy issues about the role of government-sponsored enterprises (GSEs) and the extent to which they should be allowed to compete with other credit providers. All comments were categorized and will be addressed according to topics that follow.

a. *Role of the FCS*. The role of the FCS, as a GSE, and the extent to which it should be allowed to compete with other non-GSE credit providers were issues that were frequently raised by commercial bankers in opposition to the reproposed regulations. These commenters asserted that the FCS should provide credit only to certain segments of the agricultural and rural economy that are not served adequately by other lenders. These same commenters also state that the FCA should allow the FCS to expand only into certain rural credit markets that have been neglected by the private sector.

The FCA finds that these customer regulations enable FCS banks and associations to exercise their express statutory powers appropriately. Neither the Act nor its legislative history support claims by commercial bankers that the FCS is a lender of last resort that may serve only those rural credit markets that have been abandoned by other lenders. Rather, the Act requires the FCS to maintain a presence in rural credit markets at all times, thereby assuring the availability of adequate credit for agriculture, aquaculture, and other specified sectors of the rural economy. The FCS fulfills this function by financing agriculture, farm-related businesses, non-farm rural homeowners, cooperatives, and rural utilities in both good and bad economic times. The presence of the System promotes

[3] *See* John P. O'Keefe, Risk-Based Capital Standards for Commercial Banks: Improved Capital Adequacy Standards? FDIC Bank Review, Spring/Summer 1993, vol. 6, no. 1, 1–13. More recently, economists at the Federal Reserve Bank of Boston reviewed the capital ratios used to trigger regulatory intervention. They concluded that the current bank risk-based and leverage ratios are lagging indicators of a bank's financial health and suggested that a workable solution would be to raise the capital thresholds for taking prompt corrective action. *See* Joe Peek and Eric A. Rosengren, The Use of Capital Ratios to Trigger Intervention in Problem Banks: Too Little, Too Late, The New England Economic Review, September/October 1996, 49–58.

competitive behavior among other lenders that serve these markets and contributes to the preservation of a well functioning capital market for agriculture and other rural credit needs. The FCA believes that farmers would not continue to have ready access to reliable and competitive credit if the FCS ceased to exist.

The comment letters reveal a widespread misunderstanding about the System's purpose and relationship to the Federal government and to the public. Contrary to the beliefs of many commenters, the Farm Credit System is not a taxpayer-funded, government loan program. The Federal government: (1) Holds no capital stock in FCS institutions; (2) appoints no members to the boards of directors of any FCS bank or association; and (3) appropriates no funds to the System. Rather, FCS banks and associations are cooperatives that are owned and controlled by their member-borrowers.

In response to claims that commercial bankers face significantly greater regulatory burdens than the FCS, the FCA observes that its examination, enforcement, and regulatory powers over the FCS are comparable to the authorities of other Federal bank regulatory agencies. Additionally, FCS lenders are subject to regulatory capital requirements, lending limits, and loan underwriting requirements. FCS lenders are also generally subject to the same consumer credit laws as commercial bankers, such as the Truth-In-Lending Act, Real Estate Settlement Procedures Act, Equal Credit Opportunity Act, and the Home Mortgage Disclosure Act. The requirements of section 4.19 of the Act to implement specific programs to assist small, beginning, and young farmers are not dissimilar from the obligations imposed on commercial banks under the Community Reinvestment Act. Finally, the Act requires titles I and II lenders to comply with numerous borrower rights requirements for agricultural loans, which are compliance obligations unique to FCS institutions.

Comments focused on Federal guarantees of System debt and the tax status of FCS institutions also reflected many misconceptions. Certain liabilities of both FCS banks and commercial banks are insured. The financial obligations of FCS banks are insured by the Farm Credit System Insurance Corporation (FCSIC), while the deposit liabilities, up to $100,000 per depositor, of commercial banks and savings associations are insured by the Federal Deposit Insurance Corporation (FDIC). The FCA observes that the FDIC insurance fund is backed by the full faith and credit of the United States whereas the FCSIC Insurance Fund is not. Thus, there is no express Federal guarantee of System debt. In contrast, commercial banks have an explicit Federal guarantee of their deposit liabilities.

Although many commenters assume that the FCS is tax-exempt, System institutions that are chartered under sections 2.0, 3.0, 7.0, and 7.8 of the Act (PCAs, BCs, ACBs, and ACAs) are subject to Federal taxation. Thus, FCS institutions holding 63 percent of total System assets, as of September 30, 1996, are subject to Federal taxation.

b. *Safety and Soundness.* Many commercial bank commenters assert that the new customer regulations will undermine the solvency of the FCS and expose the taxpayers to risk by encouraging System lenders to expand rapidly into credit markets in which they lack expertise. The FCA has found no factual basis for this concern. The FCS has 40 years of experience in making loans for housing and other non-agricultural purposes. Strict capital requirements and improved loan underwriting standards, as well as effective regulatory oversight, will ensure that System lenders appropriately manage the risks associated with their loans. The capital provisions of this rule impose strict capital requirements on all FCS lenders which will prevent unchecked growth in System loan portfolios. The FCA has proposed new loan underwriting regulations that will require each System institution to adopt specific underwriting standards that contain measurable criteria appropriate for the type of loan and the institution's risk-bearing capacity. In addition to the strengthened capital requirements contained in this rule, the FCSIC Insurance Fund (which currently exceeds $1 billion) and the joint and several liability of all System banks on System obligations further insulate investors in System obligations.

2. Financing for Bona Fide Farmers and Ranchers

Reproposed § 613.3000 contained new definitions and provisions that addressed the System's authorities to finance the housing, domestic, and non-agricultural business needs of *bona fide* farmers, ranchers, and aquatic producers and harvesters. It would have established specific limitations on the amount of credit FCS institutions could provide for housing and domestic needs and for non-agricultural business purposes depending on whether the borrower was actively engaged in agricultural or aquatic production and other factors.

The reproposed definition of a *bona fide* farmer, rancher, or aquatic producer or harvester would have distinguished ''active farmers'' from those who owned agricultural land but are not engaged in cultivating it. The FCA received comments about this definition from the FCC, five commercial bank trade associations, and 342 commercial banks. All commenters sought modifications to § 613.3000(a)(3).

The FCC asserted that the reproposed rule defined *bona fide* farmer and rancher more restrictively than current § 613.3010(a). More specifically, the commenter claimed that the active/passive concept in reproposed § 613.3000 would unduly limit the System's ability to finance all classes of farm owners and operators. The FCC asserted that the active/passive distinction ignores the current economic realities of agriculture because it would favor parties who conduct agricultural operations over those who own land where agricultural operations take place. The FCC suggested specific revisions to § 613.3000(a)(3) that would address System concerns.

Many commercial bank commenters and their trade associations urged the FCA to abandon all efforts to amend the existing regulations. Two commercial bank trade associations objected to reproposed § 613.3000(a)(3)(i) because it would not impose a minimal amount or percentage of income that a farmer must generate from agricultural production in order to become an eligible FCS borrower. Many commercial bank commenters expressed concern that this definition would allow farmers with minimal agricultural production to borrow from the FCS for non-agricultural purposes. Two commercial bank commenters offered specific recommendations for revising the definition of a *bona fide* farmer so that only farmers who derived a significant amount of their income from agricultural production would be eligible to borrow from the FCS.

The extent to which FCS institutions could finance the other credit needs of *bona fide* farmers and ranchers generated more comments than any other provision of the reproposed regulations. Commercial banks and their trade associations asked the FCA to withdraw its proposal and retain the existing regulation. These commenters asserted that reproposed § 613.3000(d) would convert FCS banks and associations into full-service financial institutions that would primarily extend non-agricultural credit to a vastly increased number of borrowers. These

commenters state that Congress never intended for the FCS to supplant commercial banks as the principal provider of non-agricultural credit to farmers. Two commercial bank trade associations asserted that the reproposed regulation would be incompatible with Congressional intent unless, at a minimum, it required each borrower to have an outstanding agricultural or aquatic loan with a System lender.

In the event that the FCA chose to adopt the reproposed regulation, some commercial bank commenters sought revisions to § 613.3000(d) that would address their concerns about the System's ability to finance the other credit needs of farmers. Several commenters suggested that the FCA impose specific restrictions of the System's authority to finance housing for both active and passive farmers. Many commercial bank commenters suggested that only active farmers should be allowed to borrow from the FCS for their domestic needs. One commercial bank commenter stated that System institutions should be permitted to finance only basic necessities for families that live and work on farms, and suggested that the final regulation should specifically forbid farmers from borrowing from the FCS for luxuries that are unrelated to their agricultural activities.

System comments focused on the provisions of the reproposed regulation that authorize FCS banks and associations to finance the non-agricultural business needs of eligible farmers. The FCC asserted the proposed limitation on non-agricultural business financing unreasonably restricts farmer access to a reliable source of credit and the ability of the System to meet its mission. This commenter stated that the reproposed regulation would ignore the importance of off-farm employment and off-farm income to the viability and continuity of most farming operations. In the FCC's view, the limitation also conflicted with the plain language of the Act, which places no limitation on the financing of a borrower's other credit needs. The FCC suggested that the final regulation authorize System institutions to finance the non-agricultural business needs of eligible farmers to the full extent of creditworthiness.

In view of the widespread negative response to the proposed change in definitions and the accompanying limitations on financing other credit needs, the FCA has decided not to proceed with its proposed changes to the definitions or to the rules governing System financing of farmers' other credit needs. The FCA has decided to retain the definition of *bona fide* farmer or rancher in existing § 613.3010(a), redesignated as § 613.3000(a)(1) and the scope of financing provisions of § 613.3005(a), redesignated as § 613.3005.

The final regulation will continue to define a ''bona fide farmer or rancher'' as ''a person owning agricultural land, or engaged in the production of agricultural products, including aquatic products under controlled conditions.'' The FCA also retains the existing definition of ''producer or harvester of aquatic products'' in § 613.3010(d), but it has redesignated this provision as final § 613.3000(a)(4).

Existing § 613.3005(a) will continue to govern the scope of financing for both agricultural and non-agricultural purposes. The FCA recognizes that the proper role of the System in providing credit to farmers is an important policy issue on which there are different views. The Agency will continue to consider how this regulation can address both the appropriate scope of FCS lending and the significant changes in the agricultural environment, and this issue may be the subject of future rulemakings.

The FCA has deleted § 613.3005 (b) and (c) and redesignated § 613.3005(a) as final § 613.3005. Paragraphs (b) and (c) of § 613.3005 pertain to banks for cooperatives and loan policy development, respectively, and are not necessary in the final regulation. As a conforming amendment, the FCA adopts final § 613.3000(b), which clarifies (in accordance with sections 1.11 and 2.4 of the Act) that FCBs, ACBs, and direct lender associations are authorized to finance the agricultural, aquatic and other credit needs of *bona fide* farmers, ranchers and aquatic producers or harvesters. Final § 613.3000(b) replaces reproposed § 613.3000(b), (c) and (d), and it connects the definition and eligibility provision in final § 613.3000 to the scope of financing provisions in § 613.3005. Because commercial bank commenters have indicated that existing § 613.3005 addresses their concerns about System financing of the other credit needs of farmers, the FCA finds it unnecessary to address alternative solutions that these commenters offered.

Reproposed § 613.3000(a)(1) contained a definition of ''agricultural assets'' that would have determined the amount of non-agricultural credit that *bona fide* farmers, ranchers, and aquatic producers or harvesters could obtain from FCS banks and associations. Under final § 613.3005, a borrower's access to the FCS for non-agricultural credit is not dependent on the ownership of agricultural assets. As a result, a regulatory definition of ''agricultural assets'' is no longer needed, and therefore, it has been omitted from the final regulation. Under the circumstances, the FCA need not address specific suggestions by the commenters to refine reproposed § 613.3000(a)(1). The FCA has also decided not to incorporate the definition of ''agricultural land'' in reproposed § 613.3000(a)(2) into the final regulation. Rather, § 619.9025 will continue to define ''agricultural land.'' This approach is consistent with the FCA's decision to retain most of the definitions in the existing eligibility regulations.

3. Eligibility of Non-Resident Foreign Nationals

Some commercial banks and their trade associations repeated their earlier claims that the Act does not authorize non-resident foreign nationals to borrow from the FCS. The preamble to the reproposed regulation explained that the Act does not deny foreign nationals access to the FCS. In fact, FCA regulations have permitted some foreign nationals to borrow from the FCS for the past 20 years. *See* 61 FR 42103 (Aug. 13, 1996).

For this reason, final and redesignated § 613.3000(a)(3) authorizes FCS institutions to extend credit to non-resident foreign nationals who have been lawfully admitted to the United States on a visa that authorizes them to own property or operate a business. As a result, individuals who are non-resident foreign nationals would be permitted to obtain FCS financing for their agricultural or aquatic operations and other needs in the United States on the same basis as citizens and permanent residents.

4. Eligibility of Corporate Entities

Three commercial bank trade associations opposed § 613.3000 (a)(5) and (d)(4), which establishes eligibility criteria and loan purpose restrictions for legal entities that borrow from FCS banks and associations. These commenters believe that the FCS should be authorized to finance only the on-farm production activities of legal entities and, even then, only when the legal entities are wholly owned by active farmers.

The FCA notes that these recommendations are more restrictive than the requirements in existing § 613.3020(b), which neither required farmers to own all of the voting stock or equity in an eligible legal entity, nor precluded System lenders from financing the non-agricultural activities of such borrowers. The FCA had

proposed to repeal the restrictions on eligibility in existing § 613.3020(b) because they were not required by the Act. However, to address commercial bank concerns, the reproposal placed limitations on the scope of financing for other credit needs for legal entities related to ownership and involvement in agriculture. While the final rule does not include the specific restrictions on eligibility of legal entities in existing § 613.3020(b), it retains existing § 613.3005(a) (redesignated as § 613.3005), which defines the scope of lending according to the degree of involvement in agriculture.

The FCA adopts reproposed § 613.3000(a)(5) as final but redesignates it as § 613.3000(a)(2). As a result, all legal entities, including those organized under Native American tribal law, will now be eligible for FCS financing on the same basis as other farmers.

5. Financing for Processing and Marketing Operations

The FCA received comments about its reproposed processing and marketing regulation, § 613.3010, from the ABA, IBAA, and CoBank, ACB. The two commercial bank trade associations opposed provisions in the regulation that govern the level of farmer ownership of a processing and marketing unit and the requirements regarding the farmer's throughput contribution. CoBank expressed concern about intra-System competition for processing and marketing loans.

a. *Farmer Control.* The ABA and IBAA asserted that a separate processing and marketing unit is ineligible for financing under sections 1.11(a) and 2.4(a) of the Act unless *bona fide* farmers, ranchers, or aquatic producers and harvesters own 100 percent of its equity. The preamble to reproposed § 613.3010(a)(1) responded to this argument. *See* 61 FR 42106 (Aug. 13, 1996). As previously noted in that preamble, a passage in the legislative history indicates that Congress expressly contemplated joint processing and marketing ventures between agricultural producers and investors so long as ineligible parties do not ''exercise substantial control of the facility or activity financed by the loan.''[4] Because § 613.3010(a)(1) requires agricultural or aquatic producers to own more than 50 percent of the voting stock or equity of an eligible processing and marketing operation, investors or employees who are not farmers cannot exercise ''substantial control'' over the borrower. The FCA disagrees with the opinion that any ownership by parties who are not agricultural or aquatic producers renders a processing and marketing operation ineligible for FCS financing under sections 1.11(a) and 2.4(a) of the Act.

The ABA also asserted that the regulation violates the Act because it allows a passive farm owner to obtain a processing and marketing loan from a System bank or association that operates under title I or II of the Act. A processing and marketing operation qualifies for FCS financing under the Act and § 613.3010 only if it is ''directly related'' to the borrower's agricultural or aquatic operations. Passive owners of agricultural land do not conduct a farming or ranching operation, and in such situations, they would not satisfy the eligibility criteria for a processing and marketing loan. Therefore, the FCA adopts § 613.3010(a)(1) as a final regulation without revision.

b. *Throughput Requirements.* Two commercial bank trade associations addressed the throughput requirements of § 613.3010(a)(2). The ABA asserted that allowing the FCS to finance a processing and marketing operation where the borrower provides only a minimal portion of the throughput is not authorized by the Act. The IBAA comment acknowledged that the Act permits lending to borrowers who provide minimal throughput but believes the FCA should encourage loans to applicants whose throughput exceeds 20 percent. Both commenters asked the FCA to retain the detailed paperwork requirements on FCS banks and associations in former § 613.3045.

The preambles to the proposed and reproposed regulations responded to these arguments. *See* 60 FR 47107 (Sept. 11, 1995); 61 FR 42107 (Aug. 13, 1996). The FCA concludes that the new regulation implements the Act by requiring that the processing and marketing operations be ''directly related'' to the borrower's agricultural or aquatic activities and requiring the borrower or its owner to contribute ''some portion'' of the throughput. Compliance with the eligibility requirements for processing and marketing loans is adequately assured through the internal policies of FCS institutions and the FCA's examination and enforcement powers. Furthermore, it should be noted that the statute limits loans where less than 20 percent of throughput is provided by the borrower to 15 percent of outstanding loans.

c. *Intra-System Competition.* CoBank, ACB opposed the FCA's decision to rescind its original proposal to prohibit titles I and II lenders from financing borrowers who are eligible for credit under title III of the Act. CoBank's most recent comments about intra-System competition focused exclusively on processing and marketing loans. The commenter cited passages in the legislative history that indicate that titles I and II lenders were not granted new authorities to finance the processing and marketing operations of previously ineligible borrowers. The commenter also relied on other passages in the legislative history that indicate that Congress did not contemplate full-scale competition for processing and marketing loans between FCS institutions that operate under different titles of the Act.

The Act sets forth different eligibility criteria for processing and marketing operators that are financed by FCBs and direct lender associations from those financed by title III banks. Final § 613.3010 implements these statutory provisions, and therefore, it prevents unrestrained intra-System competition for processing and marketing loans. FCBs and their affiliated associations currently finance some of those few processing and marketing operators that are simultaneously able to satisfy the eligibility criteria in title I or II and title III of the Act. The FCA is disinclined to adopt regulatory provisions that would restrict FCBs' and associations' exercise of their statutory authorities.

6. Financing Farm-Related Businesses

Four commercial bank trade associations and 15 commercial banks submitted comments to the FCA about reproposed § 613.3020, which authorizes FCS banks and associations that operate under titles I and II of the Act to finance farm-related businesses. Although one commenter acknowledged that the FCA had revised § 613.3020 to address many of the concerns that commercial bankers expressed about the original proposal, several commenters continued to raise objections to other provisions of the reproposed regulations regarding farm-related businesses.

a. *On-Farm Requirement.* One commercial bank trade association opposed the repeal of § 619.9120, which requires an eligible farm-related business to furnish services on the farms and ranches of its customers. This commenter believes that this ''on farm'' requirement is mandated by sections 1.11(c)(1) and 2.4(a)(3) of the Act and their legislative history. The FCA has concluded that neither the literal language of the statute nor its legislative history require an eligible farm-related business to actually perform services on the customer's property. *See* 44 FR 69631 (Dec. 4, 1979); 60 FR 47108 (Sept.

[4] Colloquy between Senators Stewart and Zorinsky, 126 Cong. Rec. 16560 (Dec. 13, 1980).

11, 1995); 61 FR 42107 (Aug. 13, 1996). The commenter cited a passage in the legislative history that indicates that off-farm storage and processing facilities qualify as eligible farm-related businesses. Accordingly, the FCA retains language of the reproposed regulation. *See* 61 FR 42119 (Aug. 13, 1996).

b. *Custom-Type Services.* Commercial bank commenters continued to oppose the FCA's decision to repeal existing regulatory provisions that require eligible borrowers to furnish ''custom-type'' services to farmers and ranchers. Custom-type services are tasks that farmers and ranchers can perform for themselves, but instead hire outside contractors to perform. Although sections 1.11(c)(1) and 2.4(a)(3) of the Act do not mention custom-type services, some commenters insist that the statute requires eligible farm-related business borrowers to perform only such services. Another commenter disputed statements in the earlier preambles that the Act authorizes System lenders to finance businesses that offer farmers and ranchers technologically advanced services, such as the aerial or computer mapping of crop and soil conditions.

Sections 1.11(c)(1) and 2.4(a)(3) of the Act require that eligible borrowers furnish farm-related services that are ''directly related'' to the on-farm operating needs of farmers and ranchers. Examples of permissible farm-related services mentioned in the legislative history are clearly illustrative and do not exclude other services, including technologically advanced services that directly assist farmers and ranchers in agricultural production. Indeed, a commercial bank trade association noted a passage in the legislative history that aerial crop dusting would be a permissible service, yet this presumably is not an activity that most farmers typically perform themselves.

Two commercial bank trade associations suggested that the FCA incorporate a specific list of eligible farm-related businesses into the final regulation. The suggested approach could prevent FCS banks and associations from financing farm-related businesses that are eligible to borrow under sections 1.11(c)(1) and 2.4(a)(3) of the Act. Although the previous preambles contained examples of permissible services, they were illustrative only, and not intended as a complete list of permissible services. Even if it were possible to compile a comprehensive list today, dynamic advances in the farm services industry would quickly render it obsolete.

For this reason, and those previously provided, the FCA adopts as final the repeal of the requirement that eligible farm-related businesses furnish only ''custom-type'' services to farmers and ranchers. *See* 60 FR 47108 (Sept. 11, 1995); 61 FR 42107 (Aug. 13, 1996).

c. *Whole-Firm Financing.* Three commercial bank trade associations objected to the regulatory provisions that authorize: (1) ''Whole firm'' financing to a business that derives more than 50 percent of its income from furnishing farm-related services; and (2) financing only for the farm-related services portion of a business that derives less than 50 percent of its income from furnishing such services. Two commenters claim that the Act authorizes FCS lenders to extend credit only to parties who derive a majority of their income from farm-related services. Three commenters also claimed that § 613.3020 is unenforceable because money is fungible, and businesses generally do not keep separate sets of books for services and sales of goods. Under these circumstances, the commenters argue that the FCA will be unable to monitor the borrower's use of FCS funds to ensure that only farm-related activities are financed.

The FCA concludes that final § 613.3020 complies with the Act because it restricts the FCS to financing entities that are primarily devoted to farm-related service activities or if the borrower is not primarily devoted to farm-related services, financing is restricted to a level that such activities are accomplished in relation to the whole business. The FCA has sufficient examination and enforcement powers to ensure that FCS institutions comply with these regulations. As is the case with all loans, routine examination of loan files will determine whether each FCS institution has documented the eligibility of borrowers who obtain financing for a farm-related business.

7. Financing Non-Farm Rural Homes

The FCC, two FCS associations, five commercial bank trade associations, and two commercial banks commented about various aspects of reproposed § 613.3030, which governs non-farm rural home loans.

a. *Owner-Occupied Dwellings.* Three commercial bank trade associations and one commercial bank opposed the proposed elimination of the existing regulatory requirement that the borrower occupy the dwelling. According to these commenters, the Act does not authorize FCS institutions to finance non-farm rural homes that are tenant-occupied.

The FCA observes that neither sections 1.9(3), 1.11(b), and 2.4(b) of the Act nor their legislative history require the borrower to occupy a house which is financed by the FCS. As the FCA observed in the preamble to the reproposed regulation, the repeal of the owner-occupancy requirement advances the rationale of the System's rural home finance authority, which is to ensure the availability of affordable housing for rural residents. *See* 61 FR 42109 (Aug. 13, 1996). The statutory requirement that the FCS finance housing for rural residents is satisfied because the regulation requires either the owner or a tenant to occupy the rural home as a principal residence.

b. *Definition of Rural Area.* Under reproposed § 613.3030(a)(3), a ''rural area'' is defined as ''open country within a State or the Commonwealth of Puerto Rico, which may include a town or village that has a population of not more than 2,500 persons.'' The FCA received comments about this definition from the FCC and the IBAA. For the reasons explained below, the FCA adopts the language of § 613.3030(a)(3) as reproposed.

The FCA proposed the repeal of a provision in existing § 613.3040(a)(3) that authorized FCS lenders to make home loans in open agricultural areas within the political boundaries of ''towns'' where the population exceeds 2,500 inhabitants, subject to Agency prior approval. The FCC asked the FCA to reinstate a provision in the final rule that would allow FCS lenders to make loans in open, undeveloped countryside which is devoted to agricultural production even if it has been annexed by a ''town'' with more than 2,500 inhabitants. In the commenter's opinion, the fact that this authority has been rarely used in the past does not justify its repeal. If this provision is omitted from the final regulation the FCC asked the FCA to ''grandfather'' all exemptions that have already been granted under § 613.3040(a)(3).

The FCA declines to retain the regulatory provision that permits FCS banks and associations to finance non-farm rural housing in ''towns'' where the population exceeds 2,500 inhabitants. As the FCA explained in the preamble to the reproposed regulation, the existing provision is confusing and this exception has rarely been used. *See* 61 FR 42110 (Aug. 13, 1996). All exemptions that the FCA granted under former § 613.3040(c) will continue to be areas in which rural home loans may be made as long as they meet the conditions upon which they were approved.

The IBAA requested that the FCA amend § 613.3030(a)(3) so it authorizes FCS institutions to make non-farm rural housing loans only in areas where agricultural enterprises predominate. The commenter believes that this restriction is necessary so FCS institutions do not finance housing in metropolitan areas. The commenter's concern is already addressed, however, because § 613.3030(a)(3) defines a rural area as ''open country'' and limits System rural home lending to communities where the population does not exceed 2,500 inhabitants. These restrictions effectively prevent FCS lenders from financing housing in urban and suburban areas.

c. *Moderately Priced Housing.* Reproposed § 613.3030(a)(4) established a two-tier definition of ''moderately priced housing.'' Under reproposed § 613.3030(a)(4)(i), a rural home is moderately priced if it satisfies the criteria in section 8.0 of the Act, thereby qualifying as collateral for securities that are guaranteed by the Federal Agricultural Mortgage Corporation (Farmer Mac). In the alternative, § 613.3030(a)(4)(ii) would allow FCS lenders to finance rural homes that are below the 75th percentile of housing values for the rural area where they are located, as determined by data from a credible, independent, and recognized national or regional source, such as a Federal, State, or local government agency, or an industry source. The FCA received no comments about the Farmer Mac standard in § 613.3030(a)(4)(i), but the FCC, two FCS associations, and two commercial bank trade associations sought revisions to § 613.3030(a)(4)(ii).

The FCC petitioned the FCA to omit the 75th percentile ceiling from the final regulation and rely, instead, on the overriding requirement that the FCS finance only moderately priced housing. The commenter expressed concern that the regulatory ceiling may unnecessarily curtail the System's ability to finance moderately priced rural housing. As an alternative, the commenter suggested that the final regulation establish the 75th percentile as a general guideline, while maintaining the overriding standard that financing provided would be on moderately priced homes.

In response to the comments, the final regulation provides that non-farm rural housing is automatically deemed to be moderately priced if it meets either the Farmer Mac criteria, or it falls below the 75th percentile of housing values for the area where it is located, as determined by a credible, independent, and recognized national or regional source. In addition, FCS institutions will be permitted to finance rural housing that exceeds the 75th percentile of housing values in a rural area only if they determine that the housing in question is moderately priced for the rural community where it is located, using data from a credible, independent, and recognized national or regional source. The FCA expects System institutions to fully document information that justifies a decision to finance homes as moderately priced that exceed the 75th percentile for housing values in the locale where such loans are made. This approach will give System institutions the flexibility to serve non-farm rural homeowners, while implementing the statutory requirement that the FCS finance only moderately priced homes.

Two FCS associations suggested that Federal Home Loan Mortgage Corporation (Freddie Mac) or Federal National Mortgage Association (Fannie Mae) limits determine the moderately priced standard for FCS rural home lending. The FCA previously declined this recommendation. *See* 61 FR 42111 (Aug. 13, 1996). Freddie Mac and Fannie Mae maximum loan amounts may not be generally representative of moderately priced housing in rural areas because they include housing values in urban and suburban communities. Furthermore, the Freddie Mac and Fannie Mae maximum loan amounts are not universally accepted measures of moderately priced housing. Instead, they are based on loan amounts.

Two commercial bank trade associations do not believe that § 613.3030(a)(4)(ii) should allow FCS institutions to determine moderately priced housing values in their territories. These commenters expressed concern that the FCA will not be able to take corrective action against System institutions that have closed loans on expensive homes prior to examination. As an alternative, these commenters asked the FCA to adopt a uniform national standard so that FCS rural home lending is specifically targeted to low and middle income rural residents. The commenters did not explain whether they wanted the FCA to prescribe a single price that would apply nationwide or a nationally recognized standard that takes regional variations of prices into account.

The FCA has incorporated Farmer Mac's national standard for moderately priced rural housing into the final regulation. As long as FCS institutions adhere to the statutory requirement that they finance only moderately priced rural homes, the FCA believes that they should be allowed to select other measures of moderately priced housing that are supported by data from a credible, independent, and recognized national or regional source. The FCA has not been able to identify a regionally focused standard for valuing moderately priced homes that is not influenced by housing values in metropolitan areas. Although the FCA originally proposed that FCS institutions use the most recent edition of the Census of Housing, General Housing Characteristics, published by the United States Bureau of Census to determine moderately priced housing in their territories, (*See* 60 FR 47118 (Sept. 11, 1995)), the FCA subsequently withdrew this proposal in large measure because commercial banks asserted that Census data inflated housing values in rural areas that are near metropolitan areas. *See* 61 FR 42110 (Aug. 13, 1996). Commercial bank commenters have not identified any credible or reliable national standard that reflects moderately priced rural home values.

The FCA believes that § 613.3030(a)(4)(ii) will effectively restrain FCS lenders from financing rural homes that are not moderately priced. The regulation requires each FCS lender to demonstrate that it used a credible, independent, and recognized source to ascertain moderately priced housing values in the specific locale where it makes rural home loans. Any rural home loan for a home that is not moderately priced is an ineligible loan. The FCA's enforcement powers are sufficient to deter such violations. For these reasons, the FCA adopts § 613.3030(a)(4) as a final regulation without revision.

d. *Loan Purposes.* The FCA's original proposal would have imposed no restrictions on the use of the proceeds from a loan that was secured by the borrower's rural home. *See* 60 FR 47110 (Sept. 11, 1995). The FCA responded to commercial bank concerns by rescinding this proposal and restoring the loan purpose restrictions in the existing regulation. *See* 61 FR 42111 (Aug. 13, 1996). As a result, reproposed § 613.3030(c) states that FCS institutions may make loans to rural homeowners for the purpose of buying, building, remodeling, improving, repairing rural homes, and refinancing the existing indebtedness thereon. The preamble to the reproposed regulation explained that System lenders are not precluded from offering revolving credit lines to eligible rural home borrowers so long as such loans are limited to purposes specified in § 613.3030(c). *See* 61 FR 42111 (Aug. 13, 1996).

The FCC and three FCS associations opposed the FCA's decision to reinstate the purpose restrictions into the regulation because the System will not be allowed to offer a full range of loan

products to non-farm rural homeowners. System commenters opined that the FCA's original proposal is compatible with both the Act and safe and sound lending practices. For these reasons, System commenters petitioned the FCA to omit the purpose restrictions from the final regulation. As an alternative, these commenters suggested that the final regulation require that the loan must be predominately for the purposes specified in § 613.3030(c).

The final regulation retains the purpose restrictions in § 613.3030(c) without revision. The FCA has decided at this time that rural homeowners qualifying under § 613.3030 should be required to use the proceeds of a System loan for the dwelling only.

The ABA and the IBAA challenged the preamble statement about the System's authority to offer revolving credit lines to non-farm rural homeowners if the loan proceeds are used for the purposes specified in § 613.3030(c). These commenters believe that the FCA is granting System lenders new authorities to expand into the home equity mortgage market, which they claim is adequately served by other lenders. Because non-farm rural home loans cannot exceed 15 percent of each FCS institution's loan portfolio, one commenter suggested that the FCA should require System banks and associations to finance only the purchase and construction of rural homes. Both commenters inquired how the FCA will ensure that loan proceeds are not diverted for purposes that are not authorized by the regulation.

Contrary to the commenters' beliefs, neither § 613.3030(c) nor its preamble confer new powers on FCS banks and associations. Instead, they restate the System's existing rural home lending authorities. The Act and other FCA regulations do not restrict the types of loan products that System institutions may offer their customers for permissible loan purposes. For this reason, both the existing and new regulations allow non-farm rural homeowners to obtain revolving credit lines from FCS banks and associations so long as the loan proceeds are used for specified housing purposes. As before, FCS institutions will still be required to maintain policies, procedures, and sufficient loan controls that prevent non-farm rural home borrowers from using loan proceeds for purposes that are not authorized by the regulation. The FCA will continue to use its examination and enforcement powers to ensure that FCS institutions comply with § 613.3030(c).

Neither the Act nor its legislative history support commercial bank claims that the FCS cannot offer home repair and improvement loans to rural residents who are not farmers unless such credit is unavailable elsewhere. Several passages of the legislative history confirm that Congress specifically contemplated that the FCS would finance the repair, improvement, and remodeling of non-farm rural homes.[5] The legislative history also reveals that Congress specifically considered and rejected proposals that would have required credit to be unavailable from other mortgage lenders before rural residents who were not farmers, ranchers, or aquatic producers and harvesters could obtain FCS financing for their housing needs.[6]

8. Financing Domestic and International Activities by Title III Lenders

CoBank, the ABA, and IBAA commented on §§ 613.3100 and 613.3200, which govern domestic and international lending by title III banks. While CoBank acknowledged that the FCA had addressed its concerns about the original proposal, and it sought no further changes to these regulations, the two bank trade associations continued to oppose § 613.3100(a)(5) because it would allow a BC or ACB to finance cooperatives that provide business and financially related services to their members. These two trade associations repeated their claim that Congress intended for title III banks to finance only cooperatives that aid production agriculture. The FCA responded to this opinion in the preamble to the reproposed regulation, which documented that § 613.3100(a)(5) is supported by both the plain language of section 3.8(a) of the Act and its legislative history. *See* 61 FR 42112 (Aug. 13, 1996).

However, the IBAA's most recent comment letter relies on a statement that a Senator made in 1971 to allege that the FCA misconstrued the statute. The Senator stated that the Act does not allow title III banks to finance cooperatives unless a majority of its members ''are in fact engaged in agricultural or aquatic pursuits as their major function.''[7]

The Senator's comments address eligibility, not scope of financing, for cooperatives that borrow from title III banks. Accordingly, the Senator's statement does not support the claim that title III banks lack authority to finance eligible service cooperatives that provide business and financially related services to farmers, ranchers, aquatic producers and harvesters, and their cooperatives.

Both the Act and its legislative history reveal that Congress specifically contemplated that title III banks would finance cooperatives that provide electricity, telephone service, and insurance services to farmers. Furthermore, in 1980 and 1996, Congress relaxed the farmer-membership requirements for service cooperatives. The FCA adopts §§ 613.3100 and 613.3200 as final regulations without revision.

9. Participating in Similar Entity Loans

Reproposed § 613.3300 implements the recently added authority for FCS banks and associations to participate in loans that non-System lenders make to similar entities, i.e. ineligible persons whose operations are functionally similar to those of eligible borrowers. Two commercial bank trade associations opposed this regulation because they believe that the new customer regulations confer eligibility on parties that Congress regards as similar entities. As a result, these commenters claim that the new similar entity regulation will permit FCS institutions to participate in non-agricultural loans. One of these commenters requested that the FCA identify parties who will qualify as similar parties under § 613.3300.

The FCA has already responded to these concerns in the preambles to both the proposed and reproposed regulations. The FCA again reaffirms that § 613.3300 is within the parameters of the Act, and it closely tracks the language of the statute. Furthermore, § 613.3300(b) expressly prohibits FCS institutions from participating in non-agricultural loans to similar entities, and the FCA previously denied System requests to delete this purpose restriction from the regulation. *See* 61 FR 42116 (Aug. 13, 1996). Finally, the preamble to the proposed regulation identified four parties who qualify as similar entities for FCS banks and associations that operate under titles I and II of the Act. *See* 60 FR 47115 (Sept. 11, 1995). The FCA declines to incorporate a list of similar entities into the regulation for the reasons explained in the preamble to the reproposed regulation. *See* 61 FR 42115 (Aug. 13, 1996). The commenters have raised no other issues about similar entities, and the FCA now adopts § 613.3300 as a final regulation without further amendment.

[5] See 117 Cong. Rec. S12496 (Jul. 29, 1971); 117 Cong. Rec. S19970 (Dec. 1, 1971).

[6] H.R. Rep. 92–593, 92nd Cong., 1st. Sess., (Oct. 23, 1971), p.12.

[7] 117 Cong. Rec. S12498 (July 29, 1971).

10. Other Proposed Amendments

The FCA received no comments about the proposed amendments to parts 614, 618, 619, and 626. These regulations are now adopted as final regulations without revision, except for amendments to conform regulation citations in subpart A of part 614 and § 619.9025 in part 619. The conforming changes to subpart A of part 614 will be addressed within FCA's final rule on loan underwriting and § 619.9025 is retained without revision.

IV. Regulatory Impact and FCA Regulatory Philosophy

These final regulations are consistent with the FCA Board's Policy Statement on Regulatory Philosophy and achieve the Board's objective of creating an environment that promotes the confidence of borrowers/shareholders, investors and the public in the System's financial strength and future viability. *See* 60 FR 26034 (May 16, 1995). The objective of the final revisions to the capital adequacy regulations is to establish standards that encourage the building of a sound capital structure by System institutions. The building of a sound capital structure at each institution would improve the likelihood of an institution's survival during periods of economic stress and thereby improve the safety and soundness of the System as a whole. The FCA believes that these final regulations provide a meaningful measurement of capital adequacy and would be appropriate for all System institutions to which they apply.

The capital adequacy provisions of this rule would apply to all System banks, associations, and the Leasing Corporation. During the last 5 years, most of these institutions have been steadily increasing both types of surplus identified by the reproposed regulations, and the FCA estimates that most, if not all, of the institutions would achieve the minimum standards in less than 7 years if these trends continue.

The final amendments to the customer eligibility regulations would remove some of the existing restrictions that are not required by the Act or necessary to implement it.

List of Subjects

12 CFR Part 613

Agriculture, Banks, Banking, Credit, Rural areas.

12 CFR Part 614

Agriculture, Banks, Banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, Banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

12 CFR Part 619

Agriculture, Banks, Banking, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, Banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 626

Advertising, Aged, Agriculture, Banks, Banking, Civil rights, Credit, Fair housing, Marital status discrimination, Sex discrimination, Signs and symbols.

For the reasons stated in the preamble, parts 613, 614, 615, 618, 619, 620, and 626 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

2. Subpart D (§§ 613.3110 and 613.3120) is removed.

Subpart E—Nondiscrimination in Lending

§§ 613.3145, 613.3150, 613.3151, 613,3152, 613.3160, 613.3170, 613.3175 (Subpart E) [Redesignated as Part 626]

3. Subpart E of part 613, consisting of §§ 613.3145, 613.3150, 613.3151, 613.3152, 613.3160, 613.3170, and 613.3175 is redesignated as new part 626, consisting of §§ 626.6000, 626.6005, 626.6010, 626.6015, 626.6020, 626.6025, and 626.6030 respectively.

4. Subparts A, B, and C of part 613 are revised to read as follows:

Subpart A—Financing Under Titles I and II of the Farm Credit Act

Sec.

613.3000 Financing for farmers, ranchers, and aquatic producers or harvesters.
613.3005 Lending objective.
613.3010 Financing for processing or marketing operations.
613.3020 Financing for farm-related service businesses.
613.3030 Rural home financing.

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

613.3100 Domestic lending.
613.3200 International lending.

Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

613.3300 Participations and other interests in loans to similar entities.

Subpart A—Financing Under Titles I and II of the Farm Credit Act

§ 613.3000 Financing for farmers, ranchers, and aquatic producers or harvesters.

(a) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Bona fide farmer or rancher* means a person owning agricultural land or engaged in the production of agricultural products, including aquatic products under controlled conditions.

(2) *Legal entity* means any partnership, corporation, estate, trust, or other legal entity that is established pursuant to the laws of the United States, any State thereof, the Commonwealth of Puerto Rico, the District of Columbia, or any tribal authority and is legally authorized to conduct a business.

(3) *Person* means an individual who is a citizen of the United States or a foreign national who has been lawfully admitted into the United States either for permanent residency pursuant to 8 U.S.C. 1101(a)(20) or on a visa pursuant to a provision in 8 U.S.C. 1101(a)(15) that authorizes such individual to own property or operate or manage a business or a legal entity.

(4) *Producer or harvester of aquatic products* means a person engaged in producing or harvesting aquatic products for economic gain in open waters under uncontrolled conditions.

(b) *Eligible borrower.* Farm Credit institutions that operate under titles I or II of the Act may provide financing to a bona fide farmer or rancher, or producer or harvester of aquatic products for any agricultural or aquatic purpose and for other credit needs.

§ 613.3005 Lending objective.

It is the objective of each bank and association, except for banks for cooperatives, to provide full credit, to the extent of creditworthiness, to the full-time bona fide farmer (one whose primary business and vocation is farming, ranching, or producing or harvesting aquatic products); and conservative credit to less than full-time farmers for agricultural enterprises, and more restricted credit for other credit

requirements as needed to ensure a sound credit package or to accommodate a borrower's needs as long as the total credit results in being primarily an agricultural loan. However, the part-time farmer who needs to seek off-farm employment to supplement farm income or who desires to supplement off-farm income by living in a rural area and is carrying on a valid agricultural operation, shall have availability of credit for mortgages, other agricultural purposes, and family needs in the preferred position along with full-time farmers. Loans to farmers shall be on an increasingly conservative basis as the emphasis moves away from the full-time bona fide farmer to the point where agricultural needs only will be financed for the applicant whose business is essentially other than farming. Credit shall not be extended where investment in agricultural assets for speculative appreciation is a primary factor.

§ 613.3010 Financing for processing or marketing operations.

(a) *Eligible borrowers.* A borrower is eligible for financing for a processing or marketing operation under titles I and II of the Act, only if the borrower meets the following requirements:

(1) The borrower is either a bona fide farmer, rancher, or producer or harvester of aquatic products, or is a legal entity in which eligible borrowers under § 613.3000(b) own more than 50 percent of the voting stock or equity; and

(2) The borrower or an owner of the borrowing legal entity regularly produces some portion of the throughput used in the processing or marketing operation.

(b) *Portfolio restrictions for certain processing and marketing loans.* Processing or marketing loans to eligible borrowers who regularly supply less than 20 percent of the throughput are subject to the following restrictions:

(1) *Bank limitation.* The aggregate of such processing and marketing loans made by a Farm Credit bank shall not exceed 15 percent of all its outstanding retail loans at the end of the preceding fiscal year.

(2) *Association limitation.* The aggregate of such processing and marketing loans made by all direct lender associations affiliated with the same Farm Credit bank shall not exceed 15 percent of the aggregate of their outstanding retail loans at the end of the preceding fiscal year. Each Farm Credit bank, in conjunction with all its affiliated direct lender associations, shall ensure that such processing or marketing loans are equitably allocated among its affiliated direct lender associations.

(3) *Calculation of outstanding retail loans.* For the purposes of this paragraph, ''outstanding retail loans'' includes loans, loan participations, and other interests in loans that are either bought without recourse or sold with recourse.

§ 613.3020 Financing for farm-related service businesses.

(a) *Eligibility.* An individual or legal entity that furnishes farm-related services to farmers and ranchers that are directly related to their agricultural production is eligible to borrow from a Farm Credit bank or association that operates under titles I or II of the Act.

(b) *Purposes of financing.* A Farm Credit Bank, agricultural credit bank, or direct lender association may finance:

(1) All of the farm-related business activities of an eligible borrower who derives more than 50 percent of its annual income (as consistently measured on either a gross sales or net sales basis) from furnishing farm-related services that are directly related to the agricultural production of farmers and ranchers; or

(2) Only the farm-related services activities of an eligible borrower who derives 50 percent or less of its annual income (as consistently measured on either a gross sales or net sales basis) from furnishing farm-related services that are directly related to the agricultural production of farmers and ranchers.

§ 613.3030 Rural home financing.

(a) *Definitions.*

(1) *Rural homeowner* means an individual who is not a bona fide farmer, rancher, or producer or harvester of aquatic products.

(2) *Rural home* means a single-family moderately priced dwelling located in a rural area that will be the occupant's principal residence.

(3) *Rural area* means open country within a State or the Commonwealth of Puerto Rico, which may include a town or village that has a population of not more than 2,500 persons.

(4) *Moderately priced* means the price of any rural home that either:

(i) Satisfies the criteria in section 8.0 of the Act pertaining to rural home loans that collateralize securities that are guaranteed by the Federal Agricultural Mortgage Corporation; or

(ii) Is otherwise determined to be moderately priced for housing values for the rural area where it is located, as documented by data from a credible, independent, and recognized national or regional source, such as a Federal, State, or local government agency, or an industry source. Housing values at or below the 75th percentile of values reflected in such data will be deemed moderately priced.

(b) *Eligibility.* Any rural homeowner is eligible to obtain financing on a rural home. No borrower shall have a loan from the Farm Credit System on more than one rural home at any one time.

(c) *Purposes of financing.* Loans may be made to rural homeowners for the purpose of buying, building, remodeling, improving, repairing rural homes, and refinancing existing indebtedness thereon.

(d) *Portfolio limitations.*

(1) The aggregate of retail rural home loans by any Farm Credit Bank or agricultural credit bank shall not exceed 15 percent of the total of all of its outstanding loans at any one time.

(2) The aggregate of rural home loans made by each direct lender association shall not exceed 15 percent of the total of its outstanding loans at the end of its preceding fiscal year, except with the prior approval of its funding bank.

(3) The aggregate of rural home loans made by all direct lender associations that are funded by the same Farm Credit bank shall not exceed 15 percent of the total outstanding loans of all such associations at the end of the funding bank's preceding fiscal year.

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

§ 613.3100 Domestic lending.

(a) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Cooperative* means any association of farmers, ranchers, producers or harvesters of aquatic products, or any federation of such associations, or a combination of such associations and farmers, ranchers, or producers or harvesters of aquatic products that conducts business for the mutual benefit of its members and has the power to:

(i) Process, prepare for market, handle, or market farm or aquatic products;

(ii) Purchase, test, grade, process, distribute, or furnish farm or aquatic supplies; or

(iii) Furnish business and financially related services to its members.

(2) *Farm or aquatic supplies and farm or aquatic business services* are any goods or services normally used by farmers, ranchers, or producers and harvesters of aquatic products in their business operations, or to improve the welfare or livelihood of such persons.

(3) *Public utility* means a cooperative or other entity that is licensed under

Federal, State, or local law to provide electric, telecommunication, cable television, water, or waste treatment services.

(4) *Rural area* means all territory of a State that is not within the outer boundary of any city or town having a population of more than 20,000 inhabitants based on the latest decennial census of the United States.

(5) *Service cooperative* means a cooperative that is involved in providing business and financially related services (other than public utility services) to farmers, ranchers, aquatic producers or harvesters, or their cooperatives.

(b) *Cooperatives and other entities that serve agricultural or aquatic producers.*

(1) *Eligibility of cooperatives.* A bank for cooperatives or an agricultural credit bank may lend to a cooperative that satisfies the following requirements:

(i) Unless the bank's board of directors establishes by resolution a higher voting control threshold for any type of cooperative, the percentage of voting control of the cooperative held by farmers, ranchers, producers or harvesters of aquatic products, or cooperatives shall be 80 percent except:

(A) Sixty (60) percent for a service cooperative;

(B) Sixty (60) percent for local farm supply cooperatives that have historically served the needs of a community that would not be adequately served by other suppliers and have experienced a reduction in the percentage of membership by agricultural or aquatic producers due to changed circumstances beyond their control; and

(C) Sixty (60) percent for local farm supply cooperatives that provide or will provide needed services to a community, and are or will be in competition with a cooperative specified in § 613.3100(b)(1)(i)(B);

(ii) The cooperative deals in farm or aquatic products, or products processed therefrom, farm or aquatic supplies, farm or aquatic business services, or financially related services with or for members in an amount at least equal in value to the total amount of such business it transacts with or for non-members, excluding from the total of member and non-member business, transactions with the United States, or any agencies or instrumentalities thereof, or services or supplies furnished by a public utility; and

(iii) The cooperative complies with one of the following two conditions:

(A) No member of the cooperative shall have more than one vote because of the amount of stock or membership capital owned therein; or

(B) The cooperative restricts dividends on stock or membership capital to 10 percent per year or the maximum percentage per year permitted by applicable State law, whichever is less.

(iv) Any cooperative that has received a loan from a bank for cooperatives or an agricultural credit bank shall, without regard to the requirements in paragraph (b)(1)(i) of this section, continue to be eligible for as long as more than 50 percent (or such higher percentage as is established by the bank board) of the voting control of the cooperative is held by farmers, ranchers, producers or harvesters of aquatic products, or other eligible cooperatives.

(2) *Other eligible entities.* The following entities are eligible to borrow from banks for cooperatives and agricultural credit banks:

(i) Any legal entity that holds more than 50 percent of the voting control of a cooperative that is an eligible borrower under paragraph (b)(1) of this section and uses the proceeds of the loan to fund the activities of its cooperative subsidiary on the terms and conditions specified by the bank;

(ii) Any legal entity in which an eligible cooperative has an ownership interest, *provided that* if such interest is less than 50 percent, financing shall not exceed the percentage that the eligible cooperative owns in such entity multiplied by the value of the total assets of such entity; or

(iii) Any creditworthy private entity operated on a non-profit basis that satisfies the requirements for a service cooperative and complies with the requirements of either paragraphs (b)(1)(i)(A) and (b)(1)(iii) of this section, or paragraph (b)(1)(iv) of this section, and any subsidiary of such entity. An entity that is eligible to borrow under this paragraph shall be organized to benefit agriculture in furtherance of the welfare of the farmers, ranchers, and aquatic producers or harvesters who are its members.

(c) *Electric and telecommunication utilities.*

(1) *Eligibility.* A bank for cooperatives or an agricultural credit bank may lend to:

(i) Electric and telephone cooperatives as defined by section 3.8(a)(4)(A) of the Act that satisfy the eligibility criteria in paragraph (b)(1) of this section;

(ii) Cooperatives and other entities that:

(A) Have received a loan, loan commitment, insured loan, or loan guarantee from the Rural Utilities Service of the United States Department of Agriculture to finance rural electric and telecommunication services;

(B) Have received a loan or a loan commitment from the Rural Telephone Bank of the United States Department of Agriculture; or

(C) Are eligible under the Rural Electrification Act of 1936, as amended, for a loan, loan commitment, or loan guarantee from the Rural Utilities Service or the Rural Telephone Bank.

(iii) The subsidiaries of cooperatives or other entities that are eligible under paragraph (c)(1)(ii) of this section.

(iv) Any legal entity that holds more than 50 percent of the voting control of any public utility that is an eligible borrower under paragraph (c)(1)(ii) of this section, and uses the proceeds of the loan to fund the activities of the eligible subsidiary on the terms and conditions specified by the bank.

(v) Any legal entity in which an eligible utility under paragraph (c)(1)(ii) of this section has an ownership interest, provided that if such interest is less than 50 percent, financing shall not exceed the percentage that the eligible utility owns in such entity multiplied by the value of the total assets of such entity.

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible to borrow under paragraph (c)(1) of this section in order to provide electric or telecommunication services in a rural area. A subsidiary that is eligible to borrow under paragraph (c)(1)(iii) of this section may also obtain financing from a bank for cooperatives or agricultural credit bank to operate a licensed cable television utility.

(d) *Water and waste disposal facilities.*

(1) *Eligibility.* A cooperative or a public agency, quasi-public agency, body, or other public or private entity that, under the authority of State or local law, establishes and operates water and waste disposal facilities in a rural area, as that term is defined by paragraph (a)(5) of this section, is eligible to borrow from a bank for cooperatives or an agricultural credit bank.

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible under paragraph (d)(1) of this section solely for installing, maintaining, expanding, improving, or operating water and waste disposal facilities in rural areas.

(e) *Domestic lessors.* A bank for cooperatives or agricultural credit bank may lend to domestic parties to finance the acquisition of facilities or equipment that will be leased to shareholders of the

bank for use in their operations located inside of the United States. § 613.3200 *International lending.*

(a) *Definition.* For the purpose of this section only, the term ''farm supplies'' refers to inputs that are used in a farming or ranching operation, but excludes agricultural processing equipment, machinery used in food manufacturing or other capital goods which are not used in a farming or ranching operation.

(b) *Import transactions.* The following parties are eligible to borrow from a bank for cooperatives or an agricultural credit bank pursuant to section 3.7(b) of the Act for the purpose of financing the import of agricultural commodities or products therefrom, aquatic products, and farm supplies into the United States:

(1) An eligible cooperative as defined by § 613.3100(b);

(2) A counterparty with respect to a specific import transaction with a voting stockholder of the bank for the substantial benefit of the shareholder; and

(3) Any foreign or domestic legal entity in which eligible cooperatives hold an ownership interest.

(c) *Export transactions.* Pursuant to section 3.7(b)(2) of the Act, a bank for cooperatives or an agricultural credit bank is authorized to finance the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country. The board of directors of each bank for cooperatives and agricultural credit bank shall adopt policies that ensure that exports of agricultural products and commodities, aquatic products, and farm supplies which originate from eligible cooperatives are financed on a priority basis. The total amount of balances outstanding on loans made under this paragraph shall not, at any time, exceed 50 percent of the capital of any bank for cooperatives or agricultural credit bank for loans that:

(1) Finance the export of agricultural commodities and products therefrom, aquatic products, or farm supplies that are not originally sourced from an eligible cooperative; and

(2) At least 95 percent of the loan amount is not guaranteed by a department, agency, bureau, board, or commission of the United States or a corporation that is wholly owned directly or indirectly by the United States.

(d) *International business operations.* A bank for cooperatives or an agricultural credit bank may finance a domestic or foreign entity which is at least partially owned by eligible cooperatives described in § 613.3100(b), and facilitates the international business operations of such cooperatives.

(e) *Restrictions.*

(1) When eligible cooperatives own less than 50 percent of a foreign or domestic legal entity, the amount of financing that a bank for cooperatives or agricultural credit bank may provide to the entity for imports, exports, or international business operations shall not exceed the percentage of ownership that eligible cooperatives hold in such entity multiplied by the value of the total assets of such entity; and

(2) A bank for cooperatives or agricultural credit bank shall not finance the relocation of any plant or facility from the United States to a foreign country.

Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

§ 613.3300 Participations and other interests in loans to similar entities.

(a) *Definitions.*

(1) *Participate* and *participation,* for the purpose of this section, refer to multi-lender transactions, including syndications, assignments, loan participations, subparticipations, other forms of the purchase, sale, or transfer of interests in loans, or other extensions of credit, or other technical and financial assistance.

(2) *Similar entity* means a party that is ineligible for a loan from a Farm Credit bank or association, but has operations that are functionally similar to the activities of eligible borrowers in that a majority of its income is derived from, or a majority of its assets are invested in, the conduct of activities that are performed by eligible borrowers.

(b) *Similar entity transactions.* A Farm Credit bank or a direct lender association may participate with a lender that is not a Farm Credit System institution in loans to a similar entity that is not eligible to borrow directly under § 613.3000, 613.3010, 613.3020, 613.3100, or 613.3200, for purposes similar to those for which an eligible borrower could obtain financing from the participating FCS institution.

(c) *Restrictions.* Participations by a Farm Credit bank or association in loans to a similar entity under this section are subject to the following limitations:

(1) *Lending limits.*

(i) *Farm Credit banks operating under title I of the Act and direct lender associations.* The total amount of all loan participations that any Farm Credit bank, agricultural credit bank, or direct lender association has outstanding under paragraph (b) of this section to a single credit risk shall not exceed:

(A) Ten (10) percent of its total capital; or

(B) Twenty-five (25) percent of its total capital if a majority of the shareholders of the respective Farm Credit bank or direct lender association so approve.

(ii) *Farm Credit banks operating under title III of the Act.* The total amount of all loan participations that any bank for cooperatives or agricultural credit bank has outstanding under paragraph (b) of this section to a single credit risk shall not exceed 10 percent of its total capital;

(2) *Percentage held in the principal amount of the loan.* The participation interest in the same loan held by one or more Farm Credit bank(s) or association(s) shall not, at any time, equal or exceed 50 percent of the principal amount of the loan; and

(3) *Portfolio limitations.* The total amount of participations that any Farm Credit bank or direct lender association has outstanding under paragraph (b) of this section shall not exceed 15 percent of its total outstanding assets at the end of its preceding fiscal year.

(d) *Approval by other Farm Credit System institutions.*

(1) No direct lender association shall participate in a loan to a similar entity under paragraph (b) of this section without the approval of its funding bank. A funding bank shall deny such requests only for safety and soundness reasons affecting the bank.

(2) No Farm Credit bank or direct lender association shall participate in a loan to a similar entity that is eligible to borrow under § 613.3100(b) without the prior approval of the bank for cooperatives or agricultural credit bank that, at the time the loan is made, has the greatest volume of loans made under title III of the Act in the State where the headquarters office of the similar entity is located.

(3) No bank for cooperatives or agricultural credit bank shall participate in a loan to a similar entity that is eligible to borrow under § 613.3010 or 613.3020 without the prior consent of the Farm Credit bank(s) in whose chartered territory the similar entity conducts operations.

(4) All approvals required under paragraph (d) of this section may be granted on an annual basis and under such terms and conditions as the various Farm Credit System institutions may agree.

PART 614—LOAN POLICIES AND OPERATIONS

4a. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart A—[Amended]

5. Section 614.4010 is amended by removing the words ''export or'' each place they appear in paragraphs (d)(4) and (d)(5); by removing the reference ''(d)(3)'' and adding in its place ''(d)(4)'' in paragraph (d)(5); and by adding new paragraphs (d)(6) and (d)(7) to read as follows.

§ 614.4010 Agricultural credit banks.

* * * * *

(d) * * *

* * * * *

(6) Any party, subject to the requirements in § 613.3200(c) of this chapter, for the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country, in accordance with § 614.4233 and subpart Q of this part 614; and

(7) Domestic or foreign parties in which eligible cooperatives, as defined in § 613.3100 of this chapter, hold an ownership interest, for the purpose of facilitating the international business operations of such cooperatives pursuant to the requirements of § 613.3200 (d) and (e) of this chapter.

* * * * *

6. Section 614.4020 is amended by removing the words ''export or'' each place they appear in paragraphs (a)(4) and (a)(5); by adding after the words ''bank's board'', the reference '', § 614.4233,'' in paragraph (a)(4); by removing the words ''board policy'' and adding in their place, the words ''policies of the bank's board, § 614.4233,'' in paragraph (a)(5); and by adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 614.4020 Banks for cooperatives.

(a) * * *

* * * * *

(6) Any party, subject to the requirements in § 613.3200(c) of this chapter, for the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country, in accordance with § 614.4233 and subpart Q of this part 614; and

(7) Domestic or foreign parties in which eligible cooperatives, as defined in § 613.3100 of this chapter, hold an ownership interest, for the purpose of facilitating the international business operations of such cooperatives pursuant to the requirements in § 613.3200 (d) and (e) of this chapter.

* * * * *

Subpart E—Loan Terms and Conditions

7. Section 614.4233 is amended by revising the introductory paragraph to read as follows:

§ 614.4233 International loans.

Term loans made by banks for cooperatives and agricultural credit banks under the authority of section 3.7(b) of the Act and § 613.3200 of this chapter to foreign or domestic parties who are not shareholders of the bank shall be subject to following conditions:

* * * * *

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

§ 614.4610 [Amended]

8. Section 614.4610 is amended by removing the words ''an association in the district'' and adding in their place, the words ''any association funded by the bank'' in the first sentence and removing the reference ''§ 613.3040(d)(2)'' and adding in its place the reference ''§§ 613.3010(b)(1) and 613.3030(d)''.

Subpart Q—Banks for Cooperatives Financing International Trade

9. The heading for subpart Q is amended by adding after the words ''Banks for Cooperatives'' the words ''and Agricultural Credit Banks''.

§ 614.4700 [Amended]

10. Section 614.4700 is amended by adding after the words ''banks for cooperatives'' the words ''and agricultural credit banks'' each place they appear in paragraphs (a) introductory text, (b), and (h).

§ 614.4710 [Amended]

11. Section 614.4710 is amended by adding after the words ''banks for cooperatives'' the words ''and agricultural credit banks'' each place they appear in the introductory paragraph and paragraph (c); by adding after the words ''bank for cooperatives' '' the words ''or agricultural credit bank's'' in paragraph (a)(1)(ii); by adding after the words ''bank for cooperatives'' the words ''or an agricultural credit bank'' each place they appear in paragraphs (a)(1) introductory text, (a)(1)(i), (a)(3), (a)(5) and (b)(1).

§ 614.4720 [Amended]

12. Section 614.4720 is amended by adding after the words ''Banks for cooperatives'' the words ''and agricultural credit banks'' in the first sentence of the introductory paragraph.

§ 614.4800 [Amended]

13. Section 614.4800 is amended by adding after the words ''A bank for cooperatives'' the words ''or an agricultural credit bank'' in the first sentence.

§ 614.4810 [Amended]

14. Section 614.4810 is amended by adding after the words ''banks for cooperatives'' the words ''and agricultural credit banks'' each place they appear in paragraphs (a) introductory text and (b).

§ 614.4900 [Amended]

15. Section 614.4900 is amended by adding after the words ''bank for cooperatives'' the words ''or an agricultural credit bank'' each place they appear in paragraphs (a) through (d); and by adding after the words ''banks for cooperatives'' the words ''and agricultural credit banks'' in the first sentence of paragraph (i).

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

16. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

17. Section 615.5200 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 615.5200 General.

(a) The Board of Directors of each Farm Credit System institution shall determine the amount of total capital, core surplus, total surplus, and unallocated surplus needed to assure the institution's continued financial viability and to provide for growth necessary to meet the needs of its borrowers. The minimum capital standards specified in this part are not meant to be adopted as the optimal capital level in the institution's capital adequacy plan. Rather, the standards are intended to serve as minimum levels of capital that each institution must maintain to protect against the credit and other general risks inherent in its operations.

(b) Each Board of Directors shall establish, adopt, and maintain a formal written capital adequacy plan as a part of the financial plan required by § 618.8440 of this chapter. The plan shall include the capital targets that are necessary to achieve the institution's capital adequacy goals as well as the minimum permanent capital and surplus standards. The plan shall address any projected dividends, patronage distribution, equity retirements, or other action that may decrease the institution's capital or the components thereof for which minimum amounts are required by this part. The plan shall set forth the circumstances in which retirements or revolvements of stock or equities may occur. If the plan provides for retirement or revolvement of equities included in core surplus, in connection with a loan default or the death of a former borrower, the plan must require the institution to make a prior determination that such retirement or revolvement is in the best interest of the institution, and also require the institution to charge off an amount of the indebtedness on the loan equal to the amount of the equities that are retired or canceled. In addition to factors that must be considered in meeting the minimum standards, the board of directors shall also consider at least the following factors in developing the capital adequacy plan:

* * * * *

§ 615.5201 [Amended]

18. Section 615.5201 is amended by adding the words ''Federal land credit association,'' after the words ''Federal land bank association,''; and by removing the words ''National Bank for Cooperatives,'' and adding in their place, the words ''agricultural credit bank,'' in paragraph (g); and redesignating paragraphs (j)(5) and (j)(6) as paragraphs (j)(6) and (j)(7); and by adding a new paragraph (j)(5) to read as follows:

§ 615.5201 Definitions.

* * * * *

(j) * * *

(5) Term preferred stock with an original maturity of at least 5 years and on which, if cumulative, the board of directors has the option to defer dividends, provided that, at the beginning of each of the last 5 years of the term of the stock, the amount that is eligible to be counted as permanent capital is reduced by 20 percent of the original amount of the stock (net of redemptions);

* * * * *

19. Section 615.5205 is revised to read as follows:

§ 615.5205 Minimum permanent capital standard.

Each institution shall at all times maintain permanent capital at a level of at least 7 percent of its risk-adjusted asset base.

20. Section 615.5210 is amended by removing paragraphs (f)(2)(i)(D) and (f)(2)(v)(D); redesignating paragraph (f)(2)(v)(E) as new paragraph (f)(2)(v)(D); adding a new paragraph (e)(10); and revising paragraphs (e)(7) and (f)(2)(i)(C) to read as follows:

§ 615.5210 Computation of the permanent capital ratio.

* * * * *

(e) * * *

(7) Each institution shall deduct from its total capital an amount equal to all goodwill, whenever acquired.

* * * * *

(10) The permanent capital of an institution shall exclude the net impact of unrealized holding gains or losses on available-for-sale securities.

(f) * * *

(2) * * *

(i) * * *

(C) Goodwill.

* * * * *

§ 615.5216 [Removed and reserved]

21. Section 615.5216 is removed and reserved.

Subpart I—Issuance of Equities

§ 615.5220 [Amended]

22. Section 615.5220 is amended by removing paragraph (f), redesignating existing paragraphs (g), (h), and (i) as paragraphs (f), (g), and (h), respectively; by removing the words ''may be more than, but'' each place they appear in paragraphs (d) and (e); by adding the words '', agricultural credit banks (with respect to loans other than to cooperatives),'' after the words ''For Farm Credit Banks'' in paragraph (d); by adding the words ''and agricultural credit banks (with respect to loans to cooperatives)'' after the words ''For banks for cooperatives'' in paragraph (e); and by removing the words ''(including interim standards)'' in newly designated paragraph (f).

§ 615.5230 [Amended]

23. Section 615.5230 is amended by removing the words ''preferred stock to be issued to the Farm Credit System Financial Assistance Corporation and'' in paragraph (b)(1).

24. Section 615.5240 is amended by removing paragraph (b); redesignating the introductory paragraph and paragraph (a) introductory text as paragraphs (a) and (b) introductory text, respectively; adding new paragraphs (b)(3) and (c); and revising newly designated paragraphs (a) and (b)(2) to read as follows:

§ 615.5240 Permanent capital requirements.

(a) The capitalization bylaws shall enable the institution to meet the minimum permanent capital adequacy standards established under subparts H and K of this part and the total capital requirements established by the board of directors of the institution.

(b) * * *

(2) For perpetual preferred stock issued to persons other than the Farm Credit System Financial Assistance Corporation:

* * * * *

(3) For term preferred stock:

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain, other than the original maturity date, or upon the happening of any event, such as repayment of the loan;

(ii) Retirement must be at not more than book value;

(iii) Dividends may be cumulative, but the board of directors must have the option to defer payment; and

(iv) Disclosure must have been made pursuant to § 615.5250 of the nature of the investment and the terms and conditions under which it is issued.

(c) Once an institution's board of directors has made a determination that the institution's capital position is adequate, the institution's board of directors may delegate to management the decision whether to retire borrower stock, provided that:

(1) Any such retirements are in accordance with the institution's capital adequacy plan or capital restoration plan;

(2) The institution's permanent capital ratio will be in excess of 9 percent after any such retirements;

(3) The institution meets and maintains all applicable minimum surplus and collateral standards; and

(4) The aggregate amount of stock purchases, retirements, and the net effect of such activities are reported to the board of directors each quarter.

§ 615.5250 [Amended]

25. Section 615.5250 is amended by removing paragraph (c); redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively; by removing the words ''(including interim standards)'' in paragraphs (a)(4)(ii) and newly designated (c)(3); and by removing the words '', including interim standards'' in paragraph (a)(4)(iii).

Subpart J—Retirement of Equities

§ 615.5260 [Amended]

26. Section 615.5260 is amended by adding the word ''or'' at the end of paragraph (a)(2)(i); removing ''; or'' at the end of paragraph (a)(2)(ii) and inserting a period in its place; and by removing paragraphs (a)(2)(iii) and (d).

§ 615.5270 [Amended]

27. Section 615.5270 is amended by removing the words ''(including interim standards)''; and adding the words ''or term stock at its stated maturity'' after the reference ''§ 615.5290'' in paragraph (b).

28. Subpart K is revised to read as follows:

Subpart K—Surplus and Collateral Requirements

Sec.
615.5301 Definitions.
615.5330 Minimum surplus ratios.
615.5335 Bank net collateral ratio.
615.5336 Compliance and reporting.

Subpart K—Surplus and Collateral Requirements

§ 615.5301 Definitions.

For the purposes of this subpart, the following definitions shall apply:

(a) The terms *institution, permanent capital, risk-adjusted asset base,* and *total capital* shall have the meanings set forth in § 615.5201.

(b) *Core surplus.*

(1) Core surplus means:

(i) Undistributed earnings/unallocated surplus less, for associations only, an amount equal to the net investment in the bank;

(ii) Nonqualified allocated equities that are not distributed according to an established plan or practice, *provided that,* in the event that a nonqualified patronage allocation is distributed, other than as required by section 4.14B of the Act, or in connection with a loan default or the death of an equityholder whose loan has been repaid (to the extent provided for in the institution's capital adequacy plan), any remaining nonqualified allocations that were allocated in the same year will be excluded from core surplus.

(iii) Perpetual common or noncumulative perpetual preferred stock that is not retired according to an established plan or practice, *provided that,* in the event that stock held by a borrower is retired, other than as required by section 4.14B of the Act or in connection with a loan default to the extent provided for in the institution's capital plan, the remaining perpetual stock of the same class or series shall be excluded from core surplus;

(iv) A capital instrument or a particular balance sheet entry or account that the Farm Credit Administration has determined to be the functional equivalent of a component of core surplus. The Farm Credit Administration may permit an institution to include all or a portion of such instrument, entry, or account as core surplus, permanently or on a temporary basis, for purposes of this subpart.

(2) For associations only, other allocated equities may also be included in the core surplus ratio to the extent permitted by § 615.5330(b)(3) if the following conditions are met:

(i) The allocated equities are includible in total surplus; and

(ii) The allocated equities, if subject to revolvement, are not scheduled for revolvement during the next 3 years.

(3) The deductions required to be made by an institution in the computation of its permanent capital pursuant to § 615.5210(e) (6) and (7) shall also be made in the computation of its core surplus.

(4) Core surplus shall not include equities held by other System institutions unless approved pursuant to paragraph (b)(1)(iv) of this section.

(5) The net impact of unrealized holding gains or losses on available-for-sale securities shall be excluded from core surplus.

(6) The Farm Credit Administration may, if it finds that a particular component, balance sheet entry, or account has characteristics or terms that diminish its contribution to an institution's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from core surplus.

(c) *Net collateral* means the value of a bank's collateral as defined by § 615.5050 (except that eligible investments as described in § 615.5140 are to be valued at their amortized cost), less an amount equal to that portion of the allocated investments of affiliated associations that is not counted as permanent capital by the bank.

(d) *Net collateral ratio* means a bank's net collateral, divided by the bank's total liabilities.

(e) *Net investment in the bank* means the total investment by an association in its affiliated bank, less reciprocal investments and investments resulting from a loan originating/service agency relationship, including participations.

(f) *Nonqualified allocated equities* means allocations of earnings designated to the institution's members that are not deducted from the gross taxable income of the allocating institution at the time of allocation.

(g) *Perpetual stock or equity* means stock or equity not having a maturity date, not redeemable at the option of the holder, and having no other provisions that will require the future redemption of the issue.

(h) *Qualified allocated equities* means allocations of earnings that are deducted from the gross taxable income of the allocating institution and designated to the institution's members.

(i) *Total surplus* means:

(1) Undistributed earnings/unallocated surplus;

(2) Allocated equities, including allocated surplus and stock which, if subject to revolvement or retirement, have an original planned revolvement or retirement date of not less than 5 years and are eligible to be included in permanent capital pursuant to § 615.5201(j)(4)(iv); and

(3) Stock that is not purchased or held as a condition of obtaining a loan, provided that it is either perpetual stock or term stock with an original maturity of at least 5 years, and provided that the institution has no established plan or practice of retiring such perpetual stock or of retiring such term stock prior to its stated maturity. The amount of term stock that is eligible to be included in total surplus shall be reduced by 20 percent (net of redemptions) at the beginning of each of the last 5 years of the term of the instrument.

(4) The total surplus of an institution shall exclude the net impact of unrealized holding gains or losses on available-for-sale securities.

(5) A capital instrument or a particular balance sheet entry or account that the Farm Credit

Administration has determined to be the functional equivalent of a component of total surplus. The Farm Credit Administration may permit one or more institutions to include all or a portion of such instrument, entry, or account as total surplus, permanently or on a temporary basis, for purposes of this subpart.

(6) The Farm Credit Administration may, if it finds that a particular component, balance sheet entry, or account has characteristics or terms that diminish its contribution to an institution's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from total surplus.

(7) Any deductions made by an institution in the computation of its permanent capital pursuant to § 615.5210(e) (6) and (7) shall also be made in the computation of its total surplus.

§ 615.5330 Minimum surplus ratios.

(a) *Total surplus.*

(1) Each institution shall achieve and maintain a ratio of at least 7 percent of total surplus to the risk-adjusted asset base.

(2) Each association shall compute its total surplus ratio by deducting an amount equal to the amount of allocated bank equities counted as permanent capital by the bank;

(3) Each Farm Credit bank shall compute its total surplus ratio by deducting an amount equal to the amount of the bank's equities counted as association capital.

(b) *Core surplus.*

(1) Each institution shall achieve and maintain a ratio of core surplus to the risk-adjusted asset base of at least 3.5 percent, of which no more than 2 percentage points may consist of allocated equities otherwise includible pursuant to § 615.5301(b)(2).

(2) Each association shall compute its core surplus ratio by deducting an amount equal to the net investment in its affiliated Farm Credit bank from its core surplus.

(c) An institution shall compute its total surplus and core surplus ratios as of the end of each month.

§ 615.5335 Bank net collateral ratio.

(a) Each bank shall achieve and maintain a net collateral ratio of at least 103 percent.

(b) A bank shall compute its net collateral ratio as of the end of each month.

§ 615.5336 Compliance and reporting.

(a) *Noncompliance and reporting.* An institution that meets the minimum applicable surplus ratios and net collateral ratio established in §§ 615.5330 and 615.5335 at or after the end of the quarter in which these regulations become effective and subsequently falls below one or more minimum requirements shall be in violation of the applicable regulations. Such institution shall report its noncompliance to the Farm Credit Administration within 20 calendar days following the month end in which the institution initially determines that it is not in compliance with the requirements.

(b) *Initial compliance and reporting requirements.*

(1) An institution that fails to satisfy one or more of its minimum applicable surplus and net collateral ratios at the end of the quarter in which these regulations become effective shall report its initial noncompliance to the Farm Credit Administration within 20 days following such quarter end and shall also submit a capital restoration plan for achieving and maintaining the standards, demonstrating appropriate annual progress toward meeting the goal, to the Farm Credit Administration within 60 days following such quarter end. If the capital restoration plan is not approved by the Farm Credit Administration, the Agency shall inform the institution of the reasons for disapproval, and the institution shall submit a revised capital restoration plan within the time specified by the Farm Credit Administration.

(2) *Approval of compliance plans.* In determining whether to approve a capital restoration plan submitted under this section, the FCA shall consider the following factors, as applicable:

(i) The conditions or circumstances leading to the institution's falling below minimum levels, the exigency of those circumstances, and whether or not they were caused by actions of the institution or were beyond the institution's control;

(ii) The overall condition, management strength, and future prospects of the institution and, if applicable, affiliated System institutions;

(iii) The institution's capital, adverse assets (including nonaccrual and nonperforming loans), allowance for loss, and other ratios compared to the ratios of its peers or industry norms;

(iv) How far an institution's ratios are below the minimum requirements;

(v) The estimated rate at which the institution can reasonably be expected to generate additional earnings;

(vi) The effect of the business changes required to increase capital;

(vii) The institution's previous compliance practices, as appropriate;

(viii) The views of the institution's directors and senior management regarding the plan; and

(ix) Any other facts or circumstances that the FCA deems relevant.

(3) An institution shall be deemed to be in compliance with the surplus and collateral requirements of this subpart if it is in compliance with a capital restoration plan that is approved by the Farm Credit Administration within 180 days following the end of the quarter in which these regulations become effective.

29. Subparts L and M are added to read as follows:

Subpart L—Establishment of Minimum Capital Ratios for an Individual Institution

Sec.
615.5350 General—Applicability.
615.5351 Standards for determination of appropriate individual institution minimum capital ratios.
615.5352 Procedures.
615.5353 Relation to other actions.
615.5354 Enforcement.

Subpart M—Issuance of a Capital Directive

615.5355 Purpose and scope.
615.5356 Notice of intent to issue a capital directive.
615.5357 Response to notice.
615.5358 Decision.
615.5359 Issuance of a capital directive.
615.5360 Reconsideration based on change in circumstances.
615.5361 Relation to other administrative actions.

Subpart L—Establishment of Minimum Capital Ratios for an Individual Institution

§ 615.5350 General—Applicability.

(a) The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios that would otherwise be applicable to an institution under §§ 615.5205, 615.5330, and 615.5335. The Farm Credit Administration is authorized to establish such minimum capital requirements for an institution as the Farm Credit Administration, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the institution. Proceedings under this subpart also may be initiated to require an institution having capital ratios greater than those set forth in §§ 615.5205, 615.5330, or 615.5335 to continue to maintain those higher ratios.

(b) The Farm Credit Administration may require higher minimum capital ratios for an individual institution in view of its circumstances. For example,

higher capital ratios may be appropriate for:

(1) An institution receiving special supervisory attention;

(2) An institution that has, or is expected to have, losses resulting in capital inadequacy;

(3) An institution with significant exposure due to operational risk, interest rate risk, the risks from concentrations of credit, certain risks arising from other products, services, or related activities, or management's overall inability to monitor and control financial risks presented by concentrations of credit and related services activities;

(4) An institution exposed to a high volume of, or particularly severe, problem loans;

(5) An institution that is growing rapidly; or

(6) An institution that may be adversely affected by the activities or condition of System institutions with which it has significant business relationships or in which it has significant investments.

§ 615.5351 Standards for determination of appropriate individual institution minimum capital ratios.

The appropriate minimum capital ratios for an individual institution cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in Agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(a) The conditions or circumstances leading to the Farm Credit Administration's determination that higher minimum capital ratios are appropriate or necessary for the institution;

(b) The exigency of those circumstances or potential problems;

(c) The overall condition, management strength, and future prospects of the institution and, if applicable, affiliated institutions;

(d) The institution's capital, adverse assets (including nonaccrual and nonperforming loans), allowance for loss, and other ratios compared to the ratios of its peers or industry norms; and

(e) The views of the institution's directors and senior management.

§ 615.5352 Procedures.

(a) *Notice.* When the Farm Credit Administration determines that minimum capital ratios greater than those set forth in §§ 615.5205, 615.5330, or 615.5335 are necessary or appropriate for a particular institution, the Farm Credit Administration will notify the institution in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable) and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the institution.

(b) *Response.*

(1) The institution may respond to any or all of the items in the notice. The response should include any matters which the institution would have the Farm Credit Administration consider in deciding whether individual minimum capital ratios should be established for the institution, what those capital ratios should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the designated Farm Credit Administration official within 30 days after the date on which the institution received the notice. In its discretion, the Farm Credit Administration may extend the time period for good cause. The Farm Credit Administration may shorten the time period with the consent of the institution or when, in the opinion of the Farm Credit Administration, the condition of the institution so requires, provided that the institution is informed promptly of the new time period.

(2) Failure to respond within 30 days or such other time period as may be specified by the Farm Credit Administration shall constitute a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) *Decision.* After the close of the institution's response period, the Farm Credit Administration will decide, based on a review of the institution's response and other information concerning the institution, whether individual minimum capital ratios should be established for the institution and, if so, the ratios and the date the requirements will become effective. The institution will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the institution.

(d) *Submission of plan.* The decision may require the institution to develop and submit to the Farm Credit Administration, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the institution by the date required.

(e) *Reconsideration based on change in circumstances.* If, after the Farm Credit Administration's decision in paragraph (c) of this section, there is a change in the circumstances affecting the institution's capital adequacy or its ability to reach the required minimum capital ratios by the specified date, either the institution or the Farm Credit Administration may propose a change in the minimum capital ratios for the institution, the date when the minimums must be achieved, or the institution's plan (if applicable). The Farm Credit Administration may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the Farm Credit Administration's original decision and any plan required under that decision shall continue in full force and effect.

§ 615.5353 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for an institution may be established or revised through a written agreement or cease and desist proceedings under part C of title V of the Act, or as a condition for approval of an application.

§ 615.5354 Enforcement.

An institution that does not have or maintain the minimum capital ratios applicable to it, whether required in subparts H and K of this part, in a decision pursuant to this subpart, in a written agreement or temporary or final order under part C of title V of the Act, or in a condition for approval of an application, or an institution that has failed to submit or comply with an acceptable plan to attain those ratios, will be subject to such administrative action or sanctions as the Farm Credit Administration considers appropriate. These sanctions may include the issuance of a capital directive pursuant to subpart M of this part or other enforcement action, assessment of civil money penalties, and/or the denial or condition of applications.

Subpart M—Issuance of a Capital Directive

§ 615.5355 Purpose and scope.

(a) This subpart is applicable to proceedings by the Farm Credit Administration to issue a capital directive under sections 4.3(b) and 4.3A(e) of the Act. A capital directive is an order issued to an institution that does not have or maintain capital at or greater than the minimum ratios set forth in §§ 615.5205, 615.5330, and 615.5335; or established for the institution under subpart L, by a written agreement under part C of title V of the Act, or as a condition for approval of an

application. A capital directive may order the institution to:

(1) Achieve the minimum capital ratios applicable to it by a specified date;

(2) Adhere to a previously submitted plan to achieve the applicable capital ratios;

(3) Submit and adhere to a plan acceptable to the Farm Credit Administration describing the means and time schedule by which the institution shall achieve the applicable capital ratios;

(4) Take other action, such as reduction of assets or the rate of growth of assets, restrictions on the payment of dividends or patronage, or restrictions on the retirement of stock, to achieve the applicable capital ratios; or

(5) A combination of any of these or similar actions.

(b) A capital directive may also be issued to the board of directors of an institution, requiring such board to comply with the requirements of section 4.3A(d) of the Act prohibiting the reduction of permanent capital.

(c) A capital directive issued under this rule, including a plan submitted under a capital directive, is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final as defined in section 5.25 of the Act. Violation of a capital directive may result in assessment of civil money penalties in accordance with section 5.32 of the Act.

§ 615.5356 Notice of intent to issue a capital directive.

The Farm Credit Administration will notify an institution in writing of its intention to issue a capital directive. The notice will state:

(a) The reasons for issuance of the capital directive;

(b) The proposed contents of the capital directive, including the proposed date for achieving the minimum capital requirement; and

(c) Any other relevant information concerning the decision to issue a capital directive.

§ 615.5357 Response to notice.

(a) An institution may respond to the notice by stating why a capital directive should not be issued and/or by proposing alternative contents for the capital directive or seeking other appropriate relief. The response shall include any information, mitigating circumstances, documentation, or other relevant evidence that supports its position. The response may include a plan for achieving the minimum capital ratios applicable to the institution. The response must be in writing and delivered to the Farm Credit Administration within 30 days after the date on which the institution received the notice. In its discretion, the Farm Credit Administration may extend the time period for good cause. The Farm Credit Administration may shorten the 30-day time period:

(1) When, in the opinion of the Farm Credit Administration, the condition of the institution so requires, provided that the institution shall be informed promptly of the new time period;

(2) With the consent of the institution; or

(3) When the institution already has advised the Farm Credit Administration that it cannot or will not achieve its applicable minimum capital ratios.

(b) Failure to respond within 30 days or such other time period as may be specified by the Farm Credit Administration shall constitute a waiver of any objections to the proposed capital directive.

§ 615.5358 Decision.

After the closing date of the institution's response period, or receipt of the institution's response, if earlier, the Farm Credit Administration may seek additional information or clarification of the response. Thereafter, the Farm Credit Administration will determine whether or not to issue a capital directive, and if one is to be issued, whether it should be as originally proposed or in modified form.

§ 615.5359 Issuance of a capital directive.

(a) A capital directive will be served by delivery to the institution. It will include or be accompanied by a statement of reasons for its issuance.

(b) A capital directive is effective immediately upon its receipt by the institution, or upon such later date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, or terminated by the Farm Credit Administration.

§ 615.5360 Reconsideration based on change in circumstances.

Upon a change in circumstances, an institution may request the Farm Credit Administration to reconsider the terms of its capital directive or may propose changes in the plan to achieve the institution's applicable minimum capital ratios. The Farm Credit Administration also may take such action on its own motion. The Farm Credit Administration may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the capital directive and plan shall continue in full force and effect.

§ 615.5361 Relation to other administrative actions.

A capital directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings, civil money penalties, or the conditioning or denial of applications. The Farm Credit Administration also may, in its discretion, take any action authorized by law, in lieu of a capital directive, in response to an institution's failure to achieve or maintain the applicable minimum capital ratios.

PART 618—GENERAL PROVISIONS

30. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart A—Related Services

§ 618.8005 [Amended]

31. Section 618.8005 is amended by removing the reference ''§§ 613.3010, 613.3020 (a)(1), (a)(2), (b), and 613.3045'' in paragraph (a) and adding in its place, the reference ''§§ 613.3000 (a) and (b), 613.3010, and 613.3300'' and by removing the reference ''§§ 613.3110 and 613.3120'' and adding in its place, the reference ''§§ 613.3100, 613.3200, and 613.3300'' in paragraph (b).

Subpart J—Internal Controls

§ 618.8440 [Amended]

32. Section 618.8440 is amended by removing the reference ''§ 615.5200(b)'' and adding in its place, the references ''§§ 615.5200(b), 615.5330 (c) or (d), and 615.5335(b)'' in paragraph (b)(6).

PART 619—DEFINITIONS

33. The authority citation for part 619 continues to read as follows:

Authority: Secs. 1.7, 2.4, 4.9, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8 of the Farm Credit Act (12 U.S.C. 2015, 2075, 2160, 2243, 2246, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2).

§§ 619.9030, 619.9040, 619.9065, 619.9080, 619.9090, 619.9100, 619.9120, 619.9150, 619.9160, 619.9190, 619.9220, 619.9270, 619.9280, 619.9300, and 619.9310 [Removed]

34. Sections 619.9030, 619.9040, 619.9065, 619.9080, 619.9090, 619.9100, 619.9120, 619.9150, 619.9160, 619.9190, 619.9220, 619.9270, 619.9280, 619.9300, and 619.9310 are removed.

PART 620—DISCLOSURE TO SHAREHOLDERS

35. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart B—Annual Report to Shareholders

36. Section 620.5 is amended by revising paragraphs (d)(1)(ix) and (g)(4)(ii) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(d) * * *

(1) * * *

(ix) The statutory and regulatory restriction regarding retirement of stock and distribution of earnings pursuant to § 615.5215, and any requirements to add capital under a plan approved by the Farm Credit Administration pursuant to §§ 615.5330, 615.5335, 615.5351, or 615.5357.

* * * * *

(g) * * *

(4) * * *

(ii) Describe any material trends or changes in the mix and cost of debt and capital resources. The discussion shall consider changes in permanent capital, core and total surplus, and net collateral requirements, debt, and any off-balance-sheet financing arrangements.

* * * * *

PART 626—NONDISCRIMINATION IN LENDING

37. The authority citation for part 626 is added to read as follows:

Authority: Secs. 1.5, 2.2, 2.12, 3.1, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2073, 2093, 2122, 2243, 2252); 42 U.S.C. 3601 *et seq.*; 15 U.S.C. 1691 *et seq.*; 12 CFR 202, 24 CFR 100, 109, 110.

§ 626.6025 [Amended]

38. Newly designated § 626.6025 is amended by removing the reference ''§ 613.3160(b)'' and adding in its place, the reference ''§ 626.6020(b)'' in paragraph (b).

* * * * *

Dated: January 23, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–2058 Filed 1–29–97; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–025–FOR]

Texas Regulatory Program and Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Texas regulatory program and abandoned mine land reclamation plan (hereinafter referred to as the ''Texas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas is proposing to recodify the Texas Surface Coal Mining and Reclamation Act. Texas intends to reclassify and rearrange its statutes into a format that will accommodate further expansion of the law and to eliminate repealed, invalid, and duplicated provisions in order to make the statutes more understandable and usable without altering the meaning or effect of the law.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas regulatory program. Background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, Federal Register (45 FR 12998). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

On June 23, 1980, the Secretary of the Interior approved the Texas abandoned mine plan as submitted on April 24, 1980, and amended on May 30, and June 2 and 4, 1980. Information pertaining to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the June 23, 1980, Federal Register (45 FR 41940). Subsequent actions concerning plan amendments can be found at 30 CFR 943.25.

II. Submission of the Proposed Amendment

By letter dated August 24, 1995 (Administrative Record No. TX–594), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposed to recodify the Texas Surface Coal Mining and Reclamation Act (TSCMRA) as enacted by Senate Bill (S.B.) 959 (Section 12.02), 74th Texas Legislature (1995). S.B. 959 codified, with revisions, the TSCMRA at Chapter 134 of Title 4, Natural Resources Code, and it repealed Article 5920–11, Vernon's Texas Civil Statutes with exceptions, including Sections 11 (b), (c), and (d).

OSM announced receipt of the proposed amendment in the October 16, 1995, Federal Register (60 FR 53569), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on November 15, 1995.

During its review of the amendment, OSM identified concerns relating to: (1) A definition for ''permit applicant'' or ''applicant'' [Article 5920–11, Section 3(2)]; (2) repeal of the exemption for surface coal mining operations affecting two acres or less [Article 5920–11, Section 35(2) and Chapter 134, Section 134.005(a)(2), as recodified]; (3) coal exploration operations being subject to penalties for violating statutes and/or regulations [Article 5920–11, Section 27(c) and Chapter 134, Section 134.014, as recodified]; (4) the determination date on which surface coal mining operations are exempted from being subject to designations of areas unsuitable for mining [Article 5920–11, Section 33(e) and Chapter 134, Section 134.022, as recodified]; (5) notices of violations that permit applicants are required to disclose when applying for a coal mining permit [Article 5920–11, Section 21(c) and Chapter 134, Section 134.068, as recodified]; (6) performance standards regarding the elimination of all highwalls and spoil piles [Article 5920–11, Section 23(b)(3) and Chapter 134, Section 134.092(a)(2), as recodified]; (7) violations not creating

imminent danger or causing imminent harm [Article 5920–11, Section 32(b) and Chapter 134, Section 134.162(a)(2)(A), as recodified]; (8) the termination of cessation orders [Article 5920–11, Section 32(a) and Chapter 134, Section 134.163(1), as recodified]; (9) the payment of penalties [Article 5920–11, Section 30(c) and Chapter 134, Section 134.176, as recodified]; and (10) mining by government agencies [Article 5920–11, Section 34(b)]. OSM discussed these concerns with Texas by telephone on February 9, and 27, 1996, and August 19, 1996 (Administrative Record Nos. TX–594.06, TX–594.07, and TX–594.12, respectively); by telefax dated February 28, 1996 (Administrative Record No. TX–594.09); and by letter dated July 10, 1996 (Administrative Record No. TX–594.12).

By letters dated April 2 and July 30, 1996 (Administrative Record Nos. TX–594.08 and TX–594.11, respectively), Texas responded to OSM's concerns by submitting additional explanatory information to its proposed program amendment.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

The previously approved provisions at Article 5920–11, Vernon's Texas Civil Statutes are shown in brackets. When applicable.

A. Nonsubstantive Recodification of Texas's Statutes

With the exceptions discussed in the findings below, the proposed recodification of the Texas statutes is nonsubstantive in nature, and the Director finds that the recodification does not make these statutes less stringent than SMCRA.

B. Revisions to Texas' Statutes With no Corresponding Federal Provisions

1. Short Title

At Chapter 134, Section 134.001 [Article 5920–11, Section 1], Texas proposes to change the reference for the Texas Surface Coal Mining and Reclamation Act (TSCMRA) from ''Act'' to ''chapter'' throughout the recodified statutes. The Director finds that this change is not inconsistent with SMCRA because Texas proposes only a change in the term used to describe the statutes that govern coal mining in the State.

2. Definitions

a. At Chapter 134, Section 134.004(1), Texas proposes to add a new definition, ''Affected person,'' which means ''a person having an interest that is or may be affected.'' Accordingly, all references to ''a person having an interest that is or may be affected'' are proposed to be changed to ''affected person'' throughout the recodified statutes. The Director finds that the proposal to add existing language to the new definition and to refer to the defined term is not inconsistent with SMCRA and will not render the Texas program less stringent than SMCRA or less effective than the Federal regulations.

b. Texas proposes to change the definition for ''Secretary'' at Chapter 134, Section 134.004(16) [Article 5902–11, Section 3(19)] to ''Secretary of Agriculture,'' which means the secretary of the United States Department of Agriculture. Accordingly, all references to ''Secretary'' are proposed to be change to ''Secretary of Agriculture'' throughout the recodified statutes. The Director finds that the definition for ''Secretary of Agriculture'' is substantively identical to that for ''Secretary'' which is previously approved language.

3. Jurisdiction of Commission over Surface Coal, Iron Ore, and Iron Ore Gravel Mining and Reclamation Operations

Texas proposes to add provisions for jurisdiction of the commission over iron ore and iron ore gravel mining and reclamation operations. Chapter 134, Section 134.012(a)(2) [Article 5902–11, Section 4(b)], would provide for exclusive jurisdiction over iron ore and iron ore gravel mining and reclamation operations in the State. Chapter 134, Section 134.012(b) [Article 5902–11, Section 4(b)] would provide for Chapter 134, Natural Resources Code, to govern these operations to the extent it can be made applicable. Chapter 134, Section 134.012(c) [Article 5902–11, Section 4(b)(1) and (2)] would provide exceptions for iron ore and iron ore gravel mining and reclamation activities in progress on or before September 1, 1985, or for iron ore and iron ore gravel mining operations and reclamation activities that are conducted solely on real property owned in fee simple by the person authorizing the operations or reclamation activities and that is confined to a single, contiguous tract of land if the activities are conducted in an area not larger than 20 acres, the depth of mining operations is restricted to 30 inches or less, and the fee simple owner receives surface damages. Chapter 134, Section 134.188 [Article 5902–11, Section 4(c)] would provide that it is a defense to a civil or criminal penalty under Chapter 134 that a person allegedly conducting an iron ore or iron ore gravel mining and reclamation operation in violation in Chapter 134 has a written general warranty or ownership of land, separate from any lease, from the person authorizing the operation. There are not counterpart provisions in SMCRA or the Federal regulations pertaining to iron ore or iron ore gravel mining and reclamation. However, the Director finds that the proposed provisions do not make the Texas program less stringent than SMCRA or less effective than the Federal regulations.

C. Revisions to Texas' Statutes That Are Substantively Identical to the Corresponding Federal Provisions

1. Definitions

a. At Chapter 134, Section 134.004(7), Texas proposes to add a new definition, ''Federal Act,'' which is defined as ''the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201 et seq.).'' Consequently, all references to SMCRA are proposed to be changed to ''Federal Act'' throughout the recodified statutes. The proposed definition is substantively the same as the Federal definition of ''Act'' at 30 CFR 700.5. Therefore, the Director finds that defining and referring the SMCRA as the ''Federal Act'' is not inconsistent with SMCRA or the Federal regulations, which define and reference SMCRA as the ''Act.''

b. At Chapter 134, Section 134.004(13) [Article 5920–11, Section 3(13)], Texas proposes to change the term ''permittee'' to ''permit holder,'' with no change in the definition. Accordingly, all references to ''permittee'' are proposed to be changed to ''permit holder'' throughout the recodified statutes. The Director finds that the definition for ''permit holder'' is substantively identical to that previously approved for ''permittee'' and the proposed change in terminology will not make the definition less stringent than the definition for ''permittee'' at section 701(18) of SMCRA.

c. At Chapter 134, Section 134.004(17), Texas proposes to add the definition, ''Secretary of the interior,'' as meaning ''the Secretary of the United States Department of the Interior.'' Accordingly, all references to ''the Secretary of the United States Department of the Interior'' are

proposed to be changed to ''Secretary of the interior'' throughout the recodified statutes. The Director finds that this definition is substantively identical to the definition of ''Secretary'' found at section 701(23) of SMCRA and is, therefore, approving its addition.

d. At Article 5920–11, Section 3(7), Texas proposes to remove the definition for ''Eligible land and water'' and to recodify its substantively identical provisions at Chapter 134, Section 134.142, Eligibility of Land and Water. The Director finds that removing these provisions from the general definition section of the Texas statutes and adding them to the abandoned mine reclamation section is consistent with section 404 of SMCRA.

D. Revisions to Texas' Statutes That Are Not Substantively Identical to the Corresponding Federal Provisions

1. Definitions

a. At Article 5920–11, Section 3(2), Texas proposes to delete the definition for ''applicant'' and not include the definition in its recodified statutes. The Director is approving the removal of this definition because Texas proposed to add a definition for ''applicant'' to the Texas Coal Mining Regulations in a revised amendment submittal dated July 31, 1996 (Administrative Record No. TX–621).

b. At Chapter 134, Section 134.004(3) [Article 5920–11, Section 3(3)], Texas proposes to remove, from the definition of ''Approximate Original Contour,'' the language ''and water impoundments may be permitted if the commission determines that they are in compliance with Section 23(b)(8) of this Act.'' The Federal definition for ''approximate original contour'' at section 701(2) of SMCRA allows regulatory authorities to permit water impoundments if they determine that the impoundments are in compliance with section 515(b)(8) of SMCRA. Since the Texas program continues to allow permanent water impoundments to be permitted under Chapter 134 if they meet the performance standards of Section 134.092(8), which is a counterpart to section 515(b)(8) of SMCRA, the Director finds that the change to the definition does not render the Texas program less stringent than SMCRA.

c. At Article 5920–11, Section 3(15), Texas proposes to remove the following sentence from the definition of prime farmland: ''The slope of the land can be a factor in determining whether a given soil is outside the purview of prime farmland and the commission may thus make a negative determination based upon soil type and slope,'' and to recodify this sentence at Chapter 134, Section 134.032, Determination Regarding Prime Farmland. Texas also proposes to recodify the new definition for prime farmland at Chapter 134, Section 134.004(15). The Director finds that the recodified sections contain previously approved language and is approving them.

2. Exemptions

a. At Chapter 134, Section 134.005(a)(2) [Article 5920–11, Section 35(2)], Texas proposes to recodify a provision that states that, ''This chapter does not apply to the extraction of coal: * * * for commercial purposes if the surface mining operation affects two acres or less.'' On May 7, 1987, section 528(2) of SMCRA was amended to remove the exemption on surface coal mining operations affecting two acres or less {[101 STAT. 300] SMCRA Title II—Two-Acre Exemption, Section 201 Repeal of Exemption (a)(2)}. In addition, {101 STAT. 301} Title II, Section 201(d), Effect on State Law, rendered ineffective any provision of a State law, or of a State regulation that allowed this exemption. Therefore, the Director finds that keeping this exemption in the Texas statutes does not render the statutes less stringent than SMCRA. Nevertheless, in order to prevent confusion as to whether or not this exemption is allowable, and as a housekeeping measure, Texas should remove this exemption from its statutes.

In an enclosure to a letter dated April 2, 1996 (Administrative Record No. TX–594.08), Texas agreed that it was appropriate to repeal this exemption.

b. At Article 5920–11, Section 35(4), Texas proposes to remove an exemption, from the provisions of TSCMRA, regarding the extraction of coal incidental to the extraction of other minerals. In the exemption that is proposed to be removed, the extracted coal cannot exceed 16⅔ percent of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale or coal explorations subject to TSCMRA. The removed exemption is a duplication of language in Texas' definition of ''Surface coal mining operations'' at Chapter 134, Section 134.004(19) [Article 5920–11, Section 3(17)]. Therefore, the Director finds that the proposal to remove this exemption does not make the Texas statutes less stringent than SMCRA.

3. Coal Exploration Operations

Texas proposes not to recodify the provision at Article 5920–11, Section 27(c) that provides for penalties for any person who conducts any coal exploration operations, that substantially disturb the natural land surface, in violation of Article 5920–11, Section 27, Coal Exploration Permits, or the rules issued pursuant to Section 27. In the recodified statutes at Chapter 134, Section 134.014, Coal Exploration Operations, the proposed amendment states that, ''A person who conducts coal exploration operations that substantially disturb the natural land surface shall comply with commission rules adopted to govern those operations.'' Also, in the recodified statute at Chapter 134, Section 134.174, Administrative Penalty for Violation of Permit Condition or this Chapter, Texas proposes that, ''The commission may assess an administrative penalty against a person who violates a permit condition or this chapter.'' The Director finds that the decision of the State not to recodify Article 5920–11, Section 27(c) will not render this portion of the State statutes less stringent than SMCRA because the provisions for administrative penalties at recodified Chapter 134, Section 134.174 apply to violations of permit conditions and/or violations of the statutes governing the Texas surface coal mining program.

4. Rules Regarding Monitoring, Reporting, and Inspections

At Chapter 134, Section 134.030(2) [Article 5920–11, Section 29(d)], Texas proposes to add a provision that would prohibit it from disclosing confidential information, as discussed under Chapter 134, Section 134.031, when making public all inspection and monitoring reports and other records and reports required to be kept under Chapter 134 and rules adopted under Chapter 134. The confidential information discussed under Chapter 134, Section 134.031 refers only to the analysis of the chemical and physical properties of the coal, except information regarding the mineral and chemical content that is potentially toxic in the environment. The Director finds that this provision is no less stringent than section 507(b)(17) of SMCRA and that it adds clarification that confidential information will not be disclosed.

5. Contents of Permit Application

At Chapter 134, Section 134.052(a)(18), Texas proposes to add a provision that would require the submittal of a schedule listing any notices of violations, incurred by the applicant at coal mining operations, as part of the permit application. Section 510(c) of SMCRA, Permit Approval and Denial, requires that the permit applicant file, with his permit application, a schedule of notices of

violations. Therefore, the Director finds the proposed provision is consistent with SMCRA.

6. Application Fees

At Chapter 143, Section 134.054(b) [Article 5920–11, Section 18(b)], Texas proposes to change its initial application fee for a permit to a minimum of $5,000. In the previous Texas statutes there was no minimum application fee, but the maximum fee could not exceed $1,000. Texas also proposes to add requirements for a minimum application fee of $3,000 for renewal of a permit, and a minimum application fee of $500 for revision of a permit. At Chapter 134, Section 134.054(c) [Article 5920–11, Section 18(b)], Texas proposes to allow initial application fees and renewal application fees to be paid in equal annual installments during the term of the permit. Also, Texas proposes to remove the provision at Article 5920–11, Section 18(d), as amended, that requires fees to be deposited in the State treasury and credited to the general revenue fund. The Director finds that the Texas proposals regarding a fee structure for initial, renewal, and revision permit applications are no less stringent than section 507(a) of SMCRA which allows application fees to be determined by the regulatory authority. Also, the proposal to allow initial and renewal application fees to be paid in equal installments during the term of the permit is in accordance with section 507(a) of SMCRA which allows the regulatory authority to develop procedures to enable the cost of fees to be paid over the term of the permit. The proposal to stop requiring fees to be deposited in the State treasury and credited to the general revenue fund is not inconsistent with SMCRA.

7. Annual Fee

At Chapter 134, Section 134.055 [Article 5920–11, Section 18(c)], Texas proposes to add a new provision that requires a permit holder to pay the commission an annual fee, in an amount determined by the commission, for each acre of land in the permit area on which the permit holder actually conducted operations for removing coal during the year. The fee is due by March 15 of the year following the year of the removal operations. The minimum fee is $120 per acre. Section 507(a) of SMCRA provides that an application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the regulatory authority. Such fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing the permit. The regulatory authority may develop procedures to allow the fee to be paid over the term of the permit. The Director finds that the income will be less than the anticipated cost of reviewing, administering, and enforcing permits under the Texas program. Therefore, the proposed provision pertaining to an annual fee does not render the Texas statutes less stringent than section 507(a) of SMCRA.

8. Public Inspection of Application

Texas proposes to amend Chapter 134, Section 134.057(b) [Article 5920–11, Section 17(b)], to include a provision that specifies that subsection (b) does not apply to records, reports, inspection materials, or information that is confidential under Chapter 134, Section 134.031. The Director finds that the inclusion of this provision only adds clarification that confidential information will not be disclosed and does not render the State statute less stringent than section 507(b)(17) of SMCRA.

9. Notice by Applicant

At Chapter 134, Section 134.058(2) [Article 5920–11, Section 20(a)], Texas proposes to add a new provision that specifies that the advertisement published in the newspaper of general circulation in the locality of the proposed mining operation state that the application is available for public inspection at the county courthouse of the county in which the property lies. The Director finds that the addition of this provision is consistent with section 507(b)(6) of SMCRA, which requires the advertisement to include the location of where the application is available for public inspection.

10. Lien

Previously approved Article 5920–11, Section 9(a) concerns past mining practices on privately owned land and makes reference to the completion of projects ‘‘* * * to restore, reclaim, abate, control, or prevent the adverse effects * * *’’ on these lands. At Chapter 134, Section 134.150(A), Texas proposes to remove the words ‘‘restore,’’ ‘‘abate,’’ ‘‘control,’’ and ‘‘prevent,’’ and to use only the word ‘‘reclaim.’’ The Director finds that the omitted words or variations thereof are included in Chapter 134, Section 134.150(a)(2) and when Section 134.150, as recodified, is read in its entirety, the proposed revision is no less stringent than section 408(a) of SMCRA.

11. Prohibition on Surface Coal Mining in Certain Areas

At Article 5920–11, Section 33(e), pertaining to areas unsuitable for surface coal mining, Texas provided that after May 9, 1979, and subject to valid existing rights, no surface coal mining operation except those that existed on August 3, 1977, shall be permitted to mine in areas designated as unsuitable for mining. At Chapter 134, Section 134.022(c), as recodified, Texas proposes to extend the date for valid existing rights to May 9, 1979, and to provide that this section does not affect surface coal mining operations that existed on August 3, 1977. Section 522(e) of SMCRA provides that after August 3, 1977, and subject to valid existing rights, no surface coal mining operations except those that existed on August 3, 1977, shall be permitted to mine in areas designated as unsuitable for mining. Therefore, the Director finds that Texas is requiring a less stringent provision than SMCRA and is not approving this proposed amendment. The Director is requiring Texas to remove this unapproved provision from its recodified statutes and to restore its previously approved statute language. Texas is also directed to notify OSM when the previously approved language has been restored. It is the understanding of the Director that if any provisions of Chapter 134, Natural Resources Code are disapproved by OSM, the provisions of the former TSCMRA from which the disapproved provisions were derived are continued in effect for the purposes of those provisions until September 1, 1997.

In addition, it is the Director’s understanding that Texas may amend Section 134.022(c) to refer to ‘‘rights existing on August 3, 1977,’’ rather than ‘‘rights existing on May 9, 1979,’’ so as to conform the Texas statute with SMCRA (Administrative Record No. TX–594.08).

12. Schedule of Notices of Violations

At Chapter 134, Section 134.068 [Article 5920–11, Section 21(c)], Texas proposes to remove the requirement that the applicant file a schedule listing any and all notices of violations (NOV’s) of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant. Instead, Texas proposes that the applicant file a schedule that lists only NOV’s of the proposed recodified Chapter 134 or of a law, rule, or regulation of the United States or Texas pertaining to air or water environmental protection incurred by the applicant in connection with a

surface coal mining operation in Texas during the three years before the application date. Because section 510(c) of SMCRA requires that the schedule list any and all NOV's of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with ''any'' surface coal mining operation, and not just those incurred at operations located in Texas, the Director finds the proposed statute amendment is less stringent than SMCRA and is not approving it.

However, Texas corrected this deficiency by revising Article 5920–11, Section 21(c) in an amendment submitted on August 30, 1995 (Administrative Record No. TX–595), which was approved in a separate Federal Register notice dated June 18, 1996 (61 FR 30805). This revision was enacted by Chapter 272, Senate Bill (S.B.) 271 during the same legislative session that S.B. 959 was enacted. In the amendment submitted on August 30, 1995 (Administrative Record No. TX–595), Texas provided a legal opinion of the effect of the enactments of S.B. 271 and S.B. 959. The opinion stated that the S.B. 271 amendments survive the repealer provision of S.B. 959 and are preserved as part of Chapter 134 of the Natural Resources Code.

13. Performance Standards

At Article 5920–11, Section 23(b)(3), Texas requires coal operators to ''* * * restore the approximate original contour of the land with all highwalls, spoils piles, and depressions eliminated, * * *'' At recodified Chapter 134, Section 134.092(a)(2), Texas proposes to remove the words ''highwalls'' and ''spoil piles'' from the requirement to restore the approximate original contour. The Director finds that the removal of the words ''highwalls'' and ''spoil piles'' from the requirement to restore the approximate original contour does not make this portion of the Texas statute less stringent than section 515(b)(3) of SMCRA because at recodified Chapter 134, Section 134.004(3), the definition for ''approximate original contour'' includes the elimination of all highwalls and spoils piles.

14. Violation not Creating Imminent Danger or Causing Imminent Harm

At Chapter 134, Section 134.162(a) [Article 5920–11, Section 32(b)], Texas requires the commission or its authorized representative to issue a notice, for abating a violation, to the permit holder if the violation does not create an imminent danger to the health or safety of the public ''and'' is not causing or reasonably expected to cause significant, imminent environmental harm to land, air, or water resources. Section 521(a)(3) of SMCRA requires issuance of a notice if the violation does not create imminent danger to the health or safety of the public ''or'' cannot be reasonably expected to cause significant, imminent environmental harm to land, air or water resources. However, in a letter dated April 2, 1996 (Administrative Record No. TX–594.08), Texas indicated that it had no authority to issue a notice of violation if the violation creates an imminent danger or imminent environmental harm. Texas stated that, ''If the violation meets either of those criteria, the commission is required to ''immediately'' order the cessation of operations.'' Thus, Texas' interpretation of the intent of Chapter 134, Section 134.162(a) is consistent with Section 521(a)(3) of SMCRA. It is also noted that the Texas Coal Mining Regulations (TCMR) 843.681(a) require an authorized representative of the commission to issue a notice of violation to any permit holder having a violation that does not create imminent danger ''or'' imminent environmental harm. Therefore, the Director finds that the intent and implementation of the proposed, recodified statute will be consistent with SMCRA and the Federal regulations and he is approving the recodification.

15. Term of Cessation Order

The currently approved Texas statutes at Article 5920–11, Sections 32 (a) and (b) set forth requirements under which a cessation order issued for two different classifications of violations can be terminated. For a cessation order that is issued when a violation ''creates'' an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, ''* * * The cessation order shall remain in effect until the Commission or its authorized representative determines that the condition, practice, or violation has been abated * * *'' For a cessation order that is issued when a violation ''does not create'' an imminent danger to the health or safety of the public or is not causing or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, ''* * * The cessation order shall remain in effect until the Commission or its authorized representative determines that the violation has been abated * * *'' The requirements of section 521(a)(2) of SMCRA are substantively the same as the currently approved Texas statutes. In the proposed recodified statute at Chapter 134, Section 134.163, Texas proposes that a cessation order for both classifications of violations; i.e., those that ''create'' imminent danger or significant, imminent environmental harm and those that ''do not create'' imminent danger or significant, imminent environmental harm will remain in effect only until the Commission determines that the violation has been abated. However, Texas' implementing regulation at TCMR 843.680(c) requires a cessation order to remain in effect until the condition, practice or violation has been abated. Therefore, the Director finds that the implementation of the proposed, recodified statute will be consistent with SMCRA and the Federal regulations and he is approving the recodification.

It is the Director's understanding that Texas may amend Chapter 134, Section 134.163 to refer to ''the condition, practice, or violation'' in order to more closely track the language of SMCRA and the Texas regulation (Administrative Record No. TX–594.08).

16. Payment of Penalty; Refund

Texas proposes to amend its statute at recodified Chapter 134, Section 134.176 [Article 5920–11, Section 30(c)] by removing the provision which states that failure to forward money to the Commission within 30 days of notification of the proposed penalty shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. Moreover, Texas has indicated an intention to interpret its statute such that no prepayment of penalty is required. Section 518(c) of SMCRA contains the procedural requirement that failure to forward the proposed penalty within 30 days results in a waiver of all legal rights to contest the violation or the amount of the penalty. Section 518(i) of SMCRA requires that the civil penalty provisions of a State program contain the same or similar procedural requirements relating thereto as does SMCRA. Since SMCRA has a prepayment requirement and consequences for failure to prepay, and Texas' recodified statute does not, the proposed amendment to the Texas Act is not consistent with SMCRA. Therefore, the Director finds that Chapter 134, Section 134.176 is less stringent than Section 518(c) of SMCRA and is not approving the proposed removal of the provision discussed above. The Director is requiring Texas to restore this previously approved statute language and to notify OSM when the previously approved language has been

restored. It is the understanding of the Director that if any provisions of Chapter 134, Natural Resources Code are disapproved by OSM, the provisions of the former TSCMRA from which the disapproved provisions were derived are continued in effect for the purposes of those provisions until September 1, 1997.

It should be noted that OSM has considered an amendment to 30 CFR 845.19 which would require prepayment only with respect to proceedings that occur after an administrative law judge has determined that a penalty is lawfully due. OSM has deferred final rulemaking on this issue. However, OSM has approved an amendment to the Kentucky State law regulating surface coal mining which allows for a waiver of the prepayment requirement under very limited circumstances. See 58 FR 42001, August 6, 1993. Texas may amend its program to include a limited waiver provision similar to the one approved for Kentucky.

17. Mining by Governmental Agencies; Mining on Government Land

Texas proposes not to recodify Article 5920–11, Section 34(b) which requires any agency, unit, or instrumentality of Federal, State, or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government that proposes to engage in surface coal mining operations that are subject to the requirements of TSCMRA to comply with all provisions of TSCMRA. The Director finds that the removal of this provision does not render the Texas program less stringent than section 524 of SMCRA and is approving it because the Texas Act requires all surface coal mining operations to be permitted, and, therefore, every permit has a permit holder. The State's definition for permit holder is ''a person holding a permit to conduct surface coal mining and reclamation operations or underground mining activities * * *'' (Chapter 134, Section 134.004(13), as recodified). Texas further defines ''person'' to mean ''an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens'' (Chapter 134, Section 134.004(14), as recodified). The definition for ''person'' includes ''governmental agency,'' and because it does, the Texas statutes include a provision that government entities engaging in surface coal mining operations are subject to the requirements of TSCMRA.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. OSM received only one public comment from the Texas Utilities Services, Incorporated, by letter dated November 15, 1995 (Administrative Record No. TX–594–05), thanking OSM for the opportunity to comment. No actual comments were offered on the proposed amendment. No one requested an opportunity to speak at a public hearing, therefore, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(I), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program.

By a letter dated September 18, 1995 (Administrative Record No. TX–594.02), OSM received a response from the Department of the Army, United States Army Corps of Engineers, Engineering Division stating that the proposed changes were satisfactory.

By letter dated October 2, 1995 (Administrative Record No. TX–594.04), OSM received comments on the proposed program amendment from the United States Department of Agriculture, Natural Resources Conservation Service (NRCS). These comments concerned the definition Texas proposed for prime farmland at Chapter 134, Section 134.004(15), as recodified. The NRCS stated that the Texas State Office of the Natural Resources Conservation Service in cooperation with the Texas State Soil and Water Conservation Board, and the Texas Agricultural Extension Service developed guidelines to insure consistent interpretation of the prime farmland criteria prescribed by the United States Secretary of Agriculture and published in the Federal Register. The NRCS suggested that the State may wish to reference the ''Texas'' criteria, in its definition for prime farmland, as well as the Federal criteria that is published in the Federal Register. Because the Director considers the proposed definition for prime farmland to be a nonsubstantive recodification of a previously approved definition, it is unnecessary for Texas to reference the ''Texas'' criteria in its definition for prime farmland.

The NRCS had other comment on the proposed amendment at Chapter 134, Section 134.032, Determination Regarding Prime Farmland, as recodified. The NRCS stated that the sentence, ''The commission may determine that land is not prime farmland because of its soil type or slope,'' is very open-ended and does not refer back to the definition of prime farmland at Chapter 134, Section 134.004(15), and that Texas needs to provide more guidance regarding determination of prime farmland. The Director has determined that the language in Chapter 134, Section 134.032 is previously approved language.

By letter dated September 15, 1995 (Administrative Record No. TX–594.03), OSM received three comments from the United States Department of the Interior, Bureau of Land Management (BLM). BLM stated that Chapter 134, Sections 134.092(a)(8) and 134.107, as recodified, appear to conflict. Section 134.092(a)(8) pertains to the surface coal mining and reclamation operations performance standards regarding permanent impoundments. Section 134.107 pertains to permits that may be granted a variance from having to restore the land to approximate original contour after mining. BLM also had a comment regarding mining through abandoned underground mines. BLM believed that Chapter 134, Sections 134.092(a)(12) and 134.100 conflicted. The third comment from BLM pertained to the proposed recodified Chapter 134, Section 134.098, Prohibition on Augering. The Director finds that no substantive changes were made to these previously approved provisions.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(I), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. 594.01). EPA did not respond to OSM's request.

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

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited

comments on the proposed amendment from the SHPO an ACHP (Administrative Record No. 594.01). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, the proposed amendment as submitted by Texas on August 24, 1995.

As discussed in finding number D.2.a., the Director is recommending that Texas remove Chapter 134, Section 134.005(a)(2) from its statutes concerning an exemption for surface coal mining operations affecting two acres or less. Texas should notify OSM when the removal is completed.

As discussed in finding number D.11., the Director does not approve Chapter 134, Section 134.022(c) which extends the date for valid existing rights to May 9, 1979, for the provisions relating to designating areas unsuitable for mining and is requiring Texas to remove the disapproved language at recodified Chapter 134.022(c), to restore its previously approved statute language, and to notify OSM when the removal and restoration are completed.

As discussed in finding number D.12., the Director does not approve Chapter 134, Section 134.068 which requires an applicant to file a schedule listing only notices of violations of Chapter 134 or of a law, rule, or regulation of the United States or Texas pertaining to air or water environmental protection and is requiring Texas to remove the disapproved provision and to notify OSM when the removal is completed.

As discussed in finding number D.16., the Director does not approve at Chapter 134, Section 134.176 the removal of a provision that the person charged with a violation waives all legal rights to contest the violation or amount of the penalty unless the proposed penalty is paid within 30 days of notification of the proposed penalty and is requiring Texas to restore this previously approved statute language, and to notify OSM when the restoration is completed.

The Federal regulations at 30 CFR Part 943, codifying decisions concerning the Texas 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.

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. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approve State programs. In the oversight of the Texas 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 Texas of only such provisions.

VI. 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 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and abandoned mine land reclamation plans, and program and plan amendments since each such program and plan is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met. Decisions on proposed abandoned mine land reclamation 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 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule regarding the regulatory program amendment since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). Also, no environmental impact statement is required for this rule regarding the abandoned mine land reclamation plan amendment since agency decisions on proposed State abandoned mine land reclamation 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 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 corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 19, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

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

2. Section 943.15 is amended by adding paragraph (p) to read as follows:

§ 943.15 Approval of regulatory program amendments.

* * * * *

(p) With the exceptions noted below, the recodification of Article 5920–11, Vernon's Texas Civil Statutes, Sections 1 through 38 to Chapter 134 of Title 4, Natural Resources Code, Sections 134.001 through 134.188, the revisions to and the addition of statutes to the Texas Surface Coal Mining and Reclamation Act as submitted to OSM on August 24, 1995, and supplemented with explanatory information on April 2 and July 30, 1996, are approved effective January 30, 1997.

(1) The Director is not approving Chapter 134, Section 134.022(c) which extends the date for valid existing rights to May 9, 1979, for the provisions relating to areas unsuitable for mining.

(2) The Director is not approving Chapter 134, Section 134.068, which requires an applicant to file a schedule listing only notices of violations of Chapter 134 or of a law, rule, or regulation of the United States or Texas pertaining to air or water environmental protection.

(3) The Director is approving Chapter 134, Section 134.176, except to the extent that the recodified statute does not include the previously approved provision that the person charged with a penalty waives all legal rights to contest the violation or amount of the penalty unless the proposed penalty is paid within 30 days.

3. Section 943.25 is revised to read as follows:

§ 943.25 Approval of abandoned mine land reclamation plan amendments.

(a) The amendment, as submitted by Texas on May 11 and 26, 1989, and clarified by it on April 13, 1992, certifying completion of reclamation on all lands adversely impacted by past coal mining, is approved effective August 19, 1992.

(b) The recodification of Article 5920–11, Vernon's Texas Civil Statutes, Section 3(7) to Chapter 134 of Title 4, Natural Resources Code, Section 134.142 and revision to statutes of the Texas Surface Coal Mining and Reclamation Act concerning the Texas abandoned mine land reclamation plan as submitted to OSM on August 24, 1995, are approved effective January 30, 1997.

[FR Doc. 97–2329 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 220 and 352

Third Party Collection Program and Comptroller of the Department of Defense Organizational Chart; Removal

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes the Department of Defense's Third Party Collection (TPC) Program and the organizational charter on the Comptroller of the Department of Defense codified in the CFR. The parts have served the purpose for which they were intended and are no longer necessary in the CFR.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, 703-697–4111.

SUPPLEMENTARY INFORMATION: DoD Instruction 6010.15, ''Third Party Collection (TPC) Program'' (32 CFR part 220) was replaced by DoD Instruction 6015.23. DoD Directive 5118.3, ''Comptroller of the Department of Defense (C, DoD)'' (32 CFR part 352) was revised by a January 6, 1997 version. Copies of the DoD Instruction 6015.23 and DoD Directive 5118.3 may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

List of Subjects

32 CFR Part 220

Claims, Health care, Health insurance, Military personnel.

32 CFR Part 352

Organization and functions.

PARTS 220 AND 352—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR parts 220 and 352 are removed.

Dated: January 24, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–2249 Filed 1–29–97; 8:45 am]

BILLING CODE 5000–04–M

POSTAL SERVICE

39 CFR Part 7

Board of Governors Bylaws

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Board of Governors of the United States Postal Service has approved amendments to its bylaws. The amendments repeal unnecessary provisions of the Board's regulations concerning the Government in the Sunshine Act. One change removes a provision for publishing in the Federal Register a notice not required to be published there by the Act. The other change removes an unused provision concerning Sunshine Act practice by committees of the Board.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. Koerber, (202) 268–4800.

SUPPLEMENTARY INFORMATION: The Board's bylaws, in §§ 7.4(e) and 7.5(d), have required publication in the Federal Register of two separate notices for each closed meeting of the Board. These are first, under § 7.4(e), a notice of the vote to close the meeting, which is published immediately after the vote; and second, under § 7.5(d), a notice of the time, date, place, and subject of the meeting, which is published about 10 days before the meeting.

The amendment repeals § 7.4(e), in order to remove the bylaws'' requirement for Federal Register publication of the first of these notices, which goes beyond legal requirements and other agencies'' practice. The Government in the Sunshine Act requires that notice of votes to close a meeting be made available to the public immediately after such a vote, but does not require that this notice be published in the Federal Register. The Act does require Federal Register publication of the notice of time, date, place, and subject of the meeting, as provided for in bylaw § 7.5(d), which is not changed. Other federal agencies ordinarily publish only this latter notice. As required by the Sunshine Act, 5 U.S.C. 552b(d)(3), the notice of votes to close a future meeting will continue to be made publicly available through the office of the Secretary to the Board, although no longer published in the Federal Register.

The other amendment repeals § 7.4(d) of the bylaws. This provision has provided that a committee of the Board may determine to close all of its meetings if it finds that most of them fall under certain exemptions under the Government in the Sunshine Act. This

section parallels a provision in the Sunshine Act, 5 U.S.C. § 552b(d)(4). On July 11, 1996, the Board of Governors published amendments to its bylaws to delete certain other provisions prescribing procedural rules applicable only to committees of the Board, so that committee procedure is governed by the Board's general Sunshine Act rules in Part 7 of the bylaws, and by the terms of the Act itself. Ordinarily, the committees of the Board do not hold ''meetings'' as defined in the Sunshine Act. See 61 FR 36498. Repeal of section 7.4(d) is consistent with the purposes of the previous amendments.

List of Subjects in 39 CFR Part 7

Sunshine Act.

For the reasons set forth above, 39 CFR Chapter I, Subchapter A, is amended as follows:

PART 7—PUBLIC OBSERVATION (ARTICLE VII)

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

Authority: 39 U.S.C. 401(a), as enacted by Pub. L. 91–375, and 5 U.S.C. 552b(a)–(m) as enacted by Pub. L. 94–409.

§ 7.4 [Amended]

2. Section 7.4 is amended by removing paragraphs (d) and (e).

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–2247 Filed 1–29–97; 8:45 am]

BILLING CODE 7710–12–P

39 CFR Part 963

Rules of Practice in Proceedings Relative to Violations of the Pandering Advertisements Statute

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service has established a new organization to process administrative violation cases under the Pandering Advertisements Statute. It has also adopted a new application form for obtaining the statutory remedy. This rule makes technical amendments reflecting these actions.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Diane Mego, Staff Attorney, Judicial Officer Department (202) 268–5438.

SUPPLEMENTARY INFORMATION: The Postal Service has established a new organization, called the Prohibitory Order Processing Center, to assume the administrative functions performed by Customer Service & Sales Districts under the Pandering Advertisements Statute, 39 U.S.C. 3008. One of those functions is issuing complaints when there is evidence indicating that mailers of pandering advertisements have commited violations of prohibitory orders. The statute provides for an administrative hearing if duly requested by a mailer receiving such a complaint. The procedural rules for conducting the hearing are contained in 39 CFR part 963. Such rules are issued and revised, as needed, by the Judicial Officer of the Postal Service, pursuant to 39 CFR 226.2(e)(1).

Amendment of part 963 is needed to substitute references to the Prohibitory Order Processing Center Manager for references to the Customer Services District Manager. An additional amendment is needed to insert the number and title of the new form used to apply for a 39 U.S.C. 3008 prohibitory order—viz., PS Form 1500, *Application for Listing and/or Prohibitory Order*—in place of the number and title of the superseded form—viz., PS Form 2150, *Notice for Prohibitory Order Against Sender of Pandering Advertisement in the Mails.* Also, several grammatical amendments are needed to reflect gender neutrality.

The Judicial Officer is making these revisions that are to be adopted by the Postal Service. They are changes in agency rules of procedure that do not substantially affect any rights or obligations of private parties. Therefore, it is appropriate for their adoption by the Postal Service to become effective immediately.

List of Subjects in 39 CFR Part 963

Administrative practice and procedure, Advertising, Postal Service.

Accordingly, the Postal Service adopts amendments to 39 CFR part 963 as specifically set forth below:

PART 963—[AMENDED]

1. The authority citation for Part 963 continues to read as follows:

Authority: 39 U.S.C. 204, 401, 3008.

§ 963.2 [Amended]

2. Section 963.2 is amended by adding ''the Prohibitory Order Processing Center Manager'' after removing ''a Customer Services District Manager''.

§ 963.3 [Amended]

3. Section 963.3(a) is amended by adding ''or her'' after ''his''.

4. Section 963.3(c) is amended by adding ''1500, *Application for Listing and/or Prohibitory Order*'' after removing ''2150, *Notice for Prohibitory Order Against Sender of Pandering Advertisement in the Mails*''.

5. Section 963.3(e) is amended by adding ''or her'' after ''his''.

§ 963.4 [Amended]

6. Section 963.4(a) is amended by adding ''or her'' after ''his''.

§ 963.8 [Amended]

7. Section 963.8, introductory text, is amended by adding ''or her'' after ''his'' wherever it appears.

§ 963.11 [Amended]

8. Section 963.11 is amended by adding ''or her'' after ''his''.

§ 963.14 [Amended]

9. Section 963.14 is amended by adding ''or she'' after ''he''.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–2248 Filed 1–29–97; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0009a; FRL–5674–7]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation No's. 3 and 7 for Pioneer Metal Finishing Inc. and a Revision to Regulation No. 7 for Lexmark International Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the revisions to the Colorado State Implementation Plan (SIP) as submitted by the Governor on August 25, 1995, and October 16, 1995. The revisions consist of amendments to Regulation No. 3, ''Air Contaminant Emissions Notices,'' and Regulation No. 7, ''Regulation To Control Emissions of Volatile Organic Compounds.'' The revisions to Regulations Nos. 3 and 7 for Pioneer Metal Finishing Inc. (PMF) consist of a source-specific SIP revision to allow PMF to purchase banked Volatile Organic Compound (VOC) emission reduction credits (ERC) from Coors Brewing Company (Coors), to enable PMF to come into compliance with the VOC Reasonable Available Control Technology (RACT) requirements of Regulation No. 7 (Reg. 7). The revision to Reg. 7 for Lexmark International Inc. (Lexmark) consists of a source-specific SIP revision to allow

Lexmark to utilize the provisions of Reg. 7 to perform crossline averaging for the purposes of meeting the VOC RACT requirements of Reg. 7. This Federal Register action applies to both of these submittals. EPA's approval will serve to make these revisions federally enforceable and was requested by the State of Colorado.

DATES: This final rule is effective March 31, 1997 unless adverse or critical comments are received by March 3, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to:Richard R. Long, Director, Air Program (8P2-A), United States Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office:

United States Environmental Protection Agency, Region 8, Air Program, 999 18th Street, suite 500, Denver, Colorado 80202–2466

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program (8P2-A), United States Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202–2466; Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(H)(i) of the Clean Air Act (CAA), as amended in 1990, provides the State the opportunity to amend its SIP from time to time as may be necessary. The State is utilizing this authority of the CAA to update and revise existing regulations which are part of the SIP.

I. Background to the Action

On March 3, 1978, EPA designated the Denver-Boulder metropolitan area as nonattainment for the National Ambient Air Quality Standards (NAAQS) for ozone (43 FR 8976). This designation was reaffirmed by EPA on November 6, 1991 (56 FR 56694) pursuant to section 107(d)(1) of the CAA, as amended in 1990. Furthermore, since the Denver-Boulder area had not shown a violation of the ozone standard during the three-year period from January 1, 1987 to December 31, 1989, the Denver-Boulder area was classified as a ''transitional'' ozone nonattainment area under section 185A of the amended Act.

The current Colorado Ozone SIP was approved by EPA in the Federal Register on December 12, 1983 (48 FR 55284). The SIP contains Reg. 7 which applies RACT to stationary sources of VOCs. Reg. 7 was adopted to meet the requirements of section 172(b)(2) and (3) of the 1977 CAA (concerning the application of RACT to stationary sources [1].)

During 1987 and 1988, EPA Region 8 conducted a review of Reg. 7 for consistency with the Control Techniques Guidelines documents (CTGs) and regulatory guidance, for enforceability and for clarity. The CTGs, which are guidance documents issued by EPA, set forth measures that are presumptively RACT for specific categories of sources of VOCs. A substantial number of deficiencies were identified in Reg. 7. In 1987, EPA published a proposed policy document that included, among other things, an interpretation of the RACT requirements as they applied to VOC nonattainment areas (see 52 FR 45044, November 24, 1987). On May 25, 1988, EPA published a guidance document entitled ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of the November 24, 1987 Federal Register Notice'' (the ''Blue Book''). A review of Reg. 7 against these documents uncovered additional deficiencies in the regulation.

On May 26, 1988, EPA notified the Governor of Colorado that the Carbon Monoxide (CO) SIPs for Colorado Springs and Fort Collins were inadequate to achieve the CO NAAQS. In that letter, EPA also notified the Governor that the ozone portion of the SIP had significant deficiencies in design and implementation, and requested that these deficiencies be remedied. EPA did not make a formal call for a revision to the ozone portion of the SIP in the May 1988 letter [2], even though the Denver-Boulder area was, and continues to be, designated nonattainment for ozone. The reason for this decision was that no violations of the ozone NAAQS had been recorded in the nonattainment area for the previous three years.

In a letter dated September 27, 1989, the Governor submitted revisions to Reg. 7, as adopted by the Colorado Air Quality Control Commission (AQCC) on September 21, 1989, (effective October 30, 1989) which partially addressed EPA's concerns. Revisions were made to numerous sections of Reg. 7, including 7.I Applicability, 7.II General Provisions, and 7.IX Surface Coating Operations.

In a letter dated August 30, 1990, the Governor submitted additional revisions to Reg. 7, as adopted by the AQCC on July 19, 1990 (effective August 30, 1990) to address EPA's remaining concerns with the September 27, 1989, SIP revision. Revisions were made to several sections of Reg. 7, including sections 7.I.B. and 7.I.C. (Applicability—Compliance Schedule) requiring all sources to come into compliance with the revised Reg. 7 by October 31, 1991. Sources which were in existence prior to the regulation revisions and which were covered by the then-current regulations were required to maintain compliance with those provisions.

On May 30, 1995, EPA published a final rule in the Federal Register (60 FR 28055) that fully approved the Governor's September 27, 1989, and August 30, 1990, revisions to Reg. 7. The final rule became effective on June 29, 1995.

A. Pioneer Metal Finishing Inc. (PMF)

In a letter dated January 14, 1991, PMF advised the Tri-County Health Department (for Adams, Arapahoe, and Douglas Counties) of its operation. The Air Pollution Control Division (APCD) of the Colorado Department of Health subsequently determined that the PMF facility was an emitting source which did not possess a permit from the State. PMF filed an initial permit application with the State on January 15, 1991. Upon review of the permit application, the APCD found that PMF was not in compliance with the VOC RACT requirements of Reg. 7, section IX., ''Surface Coating Operations,'' subsection L, ''Manufactured Metal Parts and Metal Products,'' as PMF could not meet the three pounds per hour or fifteen pounds per day cutoffs for use of non-compliant coatings. PMF was required to meet the RACT provisions of Reg. 7 by October 30, 1991, as detailed in section I.B.2 (Applicability to Existing Sources) of the AQCC revisions to Reg. 7 that appeared in the Governor's SIP revision submittals dated September 27, 1989, and August 30, 1990.

PMF is a small facility (approximately ten employees were noted in the January 15, 1991, permit application) that applies coatings via spray guns to metal parts and wood products that are brought to PMF by customers who do not have coating facilities or who find that establishing individual coating facilities would not be cost-effective. This work may involve quantities of

[1] The requirement to apply RACT to existing stationary sources in a nonattainment area was carried forth under the amended Act in section 172(c)(1).

[2] Under the pre-amended Act, EPA had the authority under section 110(a)(2)(H) to issue a ''SIP Call'' requiring a State to correct deficiencies in an existing SIP. Section 110(a)(2)(H) was not modified by the 1990 Amendments. In addition, the amended Act contains new section 110(k)(5) which also provides authority for a SIP Call.

high VOC coatings being used on several different jobs at once.

In a letter dated August 18, 1992, the State indicated that it was denying PMF's permit application. PMF considered installing VOC RACT control equipment on its paint booths, but found the costs economically infeasible for its operation. PMF then proposed various solutions to its problems of being unable to comply with the revised Reg. 7 limits, including an outright exemption, less stringent threshold (the five percent equivalency rule[3]), and shifting the compliance requirements to PMF's customers. None of these solutions was acceptable to the State or EPA.

A solution to PMF's dilemma began to evolve with the advent of EPA's Economic Incentive Program (EIP) rules of April 7, 1994 (59 FR 16690). With the development of this emission trading policy, EPA advised Colorado and PMF that PMF could utilize emission trading as a means to achieve the RACT requirements of Reg. 7.

EPA's prior policy on emissions trading, entitled ''Emissions Trading Policy Statement; General Principles for Creation, Banking, and Use of Emission Reduction Credits; Final Policy Statement and Accompanying Technical Issues Document'' (51 FR 43814, December 4, 1986), did not address the use of emission trading for the purposes of achieving compliance with RACT. The EIP rules, however, specifically addressed the issue of emission trading to achieve compliance for RACT provisions (see 59 FR 16695 to 16697 and 59 FR 16702 to 16705, April 7, 1994). Based on the provisions in EPA's EIP rules, PMF and Colorado designed a source-specific revision to the SIP which would allow PMF to purchase banked VOC emission reduction credits from Coors Brewing Company (State Emissions Reduction Credit Permit 91AR120R, July 25, 1994) to compensate for PMF's excess VOC emissions that would have otherwise been reduced by RACT control equipment and/or use of compliant coatings. The development and adoption of the necessary revisions to the State's Reg. 3 and Reg. 7 are further explained below in ''II. Analysis of the State's Submittals''.

B. Lexmark International Inc. (Lexmark)

Colorado's Reg. 7, section IX, establishes VOC emission limitations for specified surface coating operations and includes provisions to allow sources to achieve these emission limits through the installation and operation of RACT control equipment, use of compliant coatings, and alternative compliance methods as a source specific revision to the SIP. One such alternative compliance method involves the use of crossline averaging of emissions. The requirements for crossline averaging appear in Reg. 7, section IX.5(d). The crossline averaging provisions of section IX.5(d) were submitted by the Governor in his September 27, 1989, revision to the SIP and were fully approved by EPA on May 30, 1995 (see 60 FR 28055).

Lexmark proposed to the AQCC a source-specific revision to the SIP to enable Lexmark to use crossline averaging as a means of complying with the emission limitations that apply to Plastic Film Coating Operations (Reg. 7, section IX.J) and Manufactured Metal Parts and Metal Products operations (Reg. 7, section IX.L). Crossline averaging is appropriate in this case as it would allow Lexmark the flexibility to effect greater emission reductions than otherwise required on certain production lines and to use those additional emission reductions to offset emissions from lines where use of abatement technology is not cost effective. This crossline averaging will be applied to the facility which Lexmark operates in Boulder, Colorado. The development and adoption of the necessary revision to the State's Reg. 7 are further explained below in ''II. Analysis of the State's Submittals''.

II. Analysis of the State's Submittals

Section 110(k) of the CAA sets out provisions governing EPA's action on submissions of revisions to a State Implementation Plan. The CAA also requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after going through a reasonable notice and public hearing process prior to being submitted by a State to EPA.

A. Pioneer Metal Finishing Inc. (PMF)

The adoption of the necessary revisions to the SIP for PMF to achieve compliance with the VOC RACT provisions of Reg. 7 was handled, essentially, as a two-step process. First, changes were required to sections V.A., V.C.1, V.C.3, V.C.5, V.D.6, V.D.7, V.D.9, V.E., V.F., V.F.5, V.F.7, V.F.8.l, V.F.14, and V.F.15, of Reg. 3 (which contains Colorado's emission trading provisions), to allow Emission Reduction Credits (ERCs) to be used for bubble, netting, offset transactions, and alternative compliance methods. In addition, a change was necessary to section II.D.1 of Reg. 7, so that sources could use an alternative emission control plan or, in PMF's case, an alternative compliance method. To accomplish this, the AQCC held a public hearing on October 20, 1994, directly after which the AQCC adopted the revisions to Reg. 3 and Reg. 7. These revisions became effective on December 30, 1994. The Governor submitted these revisions to Reg. 3 and Reg. 7 by a letter dated October 16, 1995. In his October 16, 1995, letter, however, the Governor asked for conditional approval as these SIP revisions must first be approved by the Colorado General Assembly as required by the Colorado Air Pollution Prevention and Control Act (CAPPCA). The CAPPCA is strictly a State-only mandated requirement that any revision to the SIP must first be approved by the State General Assembly prior to the Governor asking EPA for final approval of the revision to the SIP. EPA received this revision to the SIP on October 17, 1995. Due to unresolved EPA legal issues involving the CAPPCA, EPA took no action on the Governor's submittal and, by operation of law under the provisions of section 110(k)(1)(B) of the CAA, the submittal became complete on April 17, 1996. By a letter dated June 25, 1996, the Governor advised that certain revisions to the SIP, which had previously been submitted for conditional approval, had been approved by the Colorado General Assembly and should now be considered by EPA for final approval and inclusion in the SIP. Mention of the particular revisions to Reg. 3 and Reg. 7, however, was inadvertently left out of the Governor's June 25, 1996, letter. This concern was noted and corrected in a supplemental letter, dated July 1, 1996, from Douglas Lempke, Acting Technical Secretary for the AQCC, on behalf of the Governor.

The second step in this two-step process involved specific revisions to Reg. 7, which required a new section IX.L.2.c through IX.L.2.c.xv, that included 15 source-specific provisions allowing PMF to use emission trading to demonstrate compliance with the VOC RACT provisions of Reg. 7. The AQCC held a public hearing on February 16, 1995, directly after which the AQCC adopted the PMF revisions to Reg. 7. These revisions became effective on April 30, 1995. The Governor submitted these particular revisions to Reg. 7 by a letter dated August 25, 1995. In his August 25, 1995, letter, however, the Governor asked for conditional approval as these SIP revisions must first be approved by the Colorado General

[3] This EPA rule, which is detailed in the Agency's May 25, 1988, document ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of [the] November 24, 1987 Federal Register'' (re: the ''Blue Book'').

Assembly as required by the CAPPCA as described above. EPA received this revision to the SIP on August 28, 1995. Again, due to the unresolved EPA legal issues involving the CAPPCA, EPA took no action on the Governor's submittal and by operation of the provisions of section 110(k)(1)(B) of the CAA, the submittal became complete on February 28, 1996. By a letter dated June 25, 1996, the Governor advised that certain revisions to the SIP, which had previously been submitted for conditional approval, had been approved by the Colorado General Assembly and should now be considered by EPA for final approval and inclusion in the SIP. Again, mention of the particular revisions to Reg. 7 was inadvertently left out of the Governor's June 25, 1996, letter. This concern was noted and corrected in a supplemental letter, dated July 1, 1996, from Douglas Lempke, Acting Technical Secretary for the AQCC, on behalf of the Governor.

B. Lexmark International Inc. (Lexmark)

The source-specific revisions to Reg. 7, for crossline averaging for Lexmark's operations, involved changes to Reg. 7 which required a new section IX.A.12 through IX.A.12.a.(xi), that included 11 source-specific requirements for Lexmark to demonstrate compliance with VOC RACT crossline averaging provisions. The AQCC held a public hearing on May 18, 1995, directly after which the AQCC adopted the Lexmark revisions Reg. 7. These revisions became effective on July 30, 1995. The Governor submitted revisions to Reg. 7 by a letter dated August 25, 1995. In his August 25, 1995, letter, however, the Governor asked for conditional approval as the SIP revisions must first be approved by the Colorado General Assembly as required by the CAPPCA, as described above. EPA received this revision to the SIP on August 28, 1995. Again, due to the unresolved EPA legal issues involving the CAPPCA, EPA took no action on the Governor's submittal and by operation of the provisions of section 110(k)(1)(B) of the CAA, the submittal became complete on February 28, 1996. By a letter dated June 25, 1996, the Governor advised that certain revisions to the SIP, which had previously been submitted for conditional approval, had been approved by the Colorado General Assembly and should now be considered by EPA for final approval and inclusion in the SIP. Again, mention of the revision to Reg. 7, however, was inadvertently left out of the Governor's June 25, 1996, letter. This concern was noted and corrected in a supplemental letter, dated July 1, 1996, from Douglas Lempke, Acting Technical Secretary for the AQCC, on behalf of the Governor.

III. Final Action

EPA is approving the Reg. 3 and Reg. 7 revisions that were adopted by the AQCC on October 20, 1994, February 16, 1995, and May 18, 1995. All supporting documentation for these revisions is contained in the Technical Support Document (TSD) for this action.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this issue of the Federal Register, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 31, 1997 unless, by March 3, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 31, 1997.

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

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., 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, 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, the Administrator certifies that it does not have significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. EPA, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

D. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 31, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2) of the CAA).

E. Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1980.

Dated: December 2, 1996.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR part 52 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 G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(78) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(78) Revisions to the Colorado State Implementation Plan were submitted by the Governor of the State of Colorado on August 25, 1995, and October 16, 1995. The revisions consist or amendments to Regulation No. 3, ''Air Contaminant Emissions Notices'' and to Regulation No. 7, ''Regulation To Control Emissions of Volatile Organic Compounds.'' These revisions involve source-specific State Implementation Plan requirements for emission trading for Pioneer Metal Finishing Inc. and crossline averaging for Lexmark International Inc.

(i) Incorporation by reference.

(A) Revisions to Regulation No. 3, 5 CCR 1001–5, sections V.A. (Purpose), V.C.1 , V.C.3, V.C.5 (Definitions), V.D.6, V.D.7, V.D.9 (Procedure for Certification of Emissions Reductions and Approval of Transactions), V.E. (Criteria for Certification of Emissions Reductions), V.F., V.F.5, V.F.7, V.F.8.l, V.F.14, and V.F.15 (Criteria for Approval of all Transactions) and Revisions to Regulation No. 7, 5 CCR 1001–9, section II.D.1.a (Alternative Control Plans and Test Methods) became effective on December 30, 1994. The new section IX.L.2.c through IX.L.2.c.xv (Manufactured Metal Parts and Metal Products) to Regulation No. 7, 5 CCR 1001–9, applicable to Pioneer Metal Finishing Inc., became effective on April 30, 1995. The new section IX.A.12 through IX.A.12.a.(xi) (General Provisions) to Regulation No. 7, 5 CCR 1001–9, applicable to Lexmark International Inc., became effective July 30, 1995.

* * * * *

[FR Doc. 97–2288 Filed 1–29–97; 8:45 am]

BILLING CODE 6560–50–F

---

40 CFR Part 60

[FRL–5681–5]

Notice of Determination That the New Source Performance Standards (Subpart Eb) Apply to Central Wayne Energy Recovery, L.P., Dearborn Heights, Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of determination of Part 60 applicability.

SUMMARY: The Environmental Protection Agency (EPA) publishes its decision that a proposed modification to the municipal waste combustor in Dearborn Heights, Michigan, will trigger the applicability of the ''Standards of Performance for Municipal Waste Combustors'' (Part 60, Subpart Eb).

EFFECTIVE DATE: This decision takes effect on October 11, 1996. Petitions for review of this determination must be filed on or before March 31, 1997 in accordance with the provisions of section 307(b)(1) of the Clean Air Act.

ADDRESSES: The related material in support of this decision may be examined during normal business hours at the United States Environmental Protection Agency, Air and Radiation Division, Air Enforcement and Compliance Assurance Branch, 17th Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Gahris of U.S. EPA Region 5, Air Enforcement and Compliance Assurance Branch (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone (312) 886–6794.

SUPPLEMENTARY INFORMATION: On August 16, 1995, the Director of Wayne County, Michigan's Air Quality Management Division, requested a determination on the applicability of the New Source Performance Standards for New Stationary Sources (NSPS) to a ''waste-to-energy'' conversion project proposed by the Central Wayne Energy Limited Partnership for the municipal waste combustor facility located in Dearborn Heights, Michigan. After requesting and receiving additional clarifying information, EPA responded to Wayne County's request by means of a letter dated October 11, 1996. EPA determined that each of the MWC units at the facility will become subject to the NSPS for municipal waste combustors (40 CFR Part 60, Subpart Eb, as promulgated on December 19, 1995). This determination was based on the NSPS and emissions guidelines that were published in the Federal Register on December 19, 1995, and codified at 40 CFR Part 60, Subparts Eb and Cb, respectively.

In addition to the publication of this action, EPA is placing a copy of this determination on its Technology Transfer Network (TTN) bulletin board service.

(Sec. 111 and Sec.129, Clean Air Act (42 U.S.C. 7411))

Dated: January 13, 1997.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 97–2325 Filed 1–29–97; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 63

[AD–FRL–5682–3]

National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule deadline extension.

SUMMARY: On January 25, 1995, the EPA issued national emission standards for hazardous air pollutants (NESHAP) under Section 112 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990, for Hard and

Decorative Chromium Electroplating and Chromium Anodizing Tanks. The NESHAP requires existing and new major and area sources to control emissions of hazardous air pollutants using the maximum achievable control technology (MACT). Today's action revises the compliance date for some of the sources subject to this standard. Specifically, this action extends the monitoring, reporting, and recordkeeping (MRR) requirements for hard chromium electroplaters and chromium anodizing operations in California from a January 25, 1997 compliance deadline to a July 24, 1997 compliance date.

The EPA is promulgating these revisions as an interim final regulation and is requesting comments on the revisions. The revisions will be in effect during the interim period while EPA receives, reviews, and responds to any comments.

DATES: The interim final rule will be effective January 30, 1997. Written comments on this action must be received by EPA at the address below on or before March 3, 1997.

ADDRESSES: Comments should be submitted to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–88–02, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed under **FOR FURTHER INFORMATION CONTACT**. Comments may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov.

Docket. Docket No. A–88–02 containing the supporting information for the original NESHAP and this action, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M–1500, first floor, 401 M Street SW., Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Lalit Banker, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5420.

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated category and entities affected by this action include the hard chromium electroplating and chromium anodizing operations in the State of California only. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in section 63.340 of the regulation. If you have questions regarding the applicability of this action to a particular entity, consult your State/local agency, EPA regional offices, or Lalit Banker at the number listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Additional Information

The EPA, in association with the industry participating in the Common Sense Initiative, has undertaken emission test efforts at existing hard chromium electroplating operations to explore the applicability and feasibility of alternative control techniques that could be applied to comply with the rule and that may have significant pollution prevention opportunities and cost savings. The report of this effort has recently been completed and shows considerable promise. The majority of hard chromium sources could make use of this technology but need to carefully explore the applicability of these alternative control techniques to their respective operations. Contact your trade association or Mr. Paul Shapiro of EPA at (202) 260–4969 for further information on this report.

II. Basis for Changes to Rule

In accordance with the provisions of the Administrative Procedure Act (APA), EPA is invoking the good cause exception in taking this final action without prior notice and an opportunity for comment. 5 U.S.C. 553(b)(B); *Shell Oil Co.* v. *EPA*, 950 F.2d 741.752 (DC Cir.1991). The EPA is extending the compliance date for MRR requirements for hard chromium electroplaters and the chromium anodizing sources in California from January 25, 1997, to July 24, 1997, to allow time for the California Air Resources Board (CARB) to establish and get approved MRR requirements for these sources that would be at least as stringent as the Federal NESHAP requirements. The net effect of this compliance extension will be that all the hard chromium electroplaters and the chromium anodizing sources in California that apply add-on emission control devices to reduce chromium emissions would continue to operate as they do now, while complying with the current applicable State/district rules. The Federal NESHAP requires these sources to monitor applicable parameters on and after the date on which the initial performance test is required to be completed, which is July 24, 1997. However, for chromium anodizing sources that use fume suppressants as the control technology, the MRR requirements were effective January 25, 1997, if they choose not to do a performance test (which is allowed).

These sources in California are presently required to comply with California's ''Chrome Plating Air Toxics Control Measure'' (February 1988), which specifies the application of control technology (already in place), that is identical to that required by the Chromium NESHAP. The Chromium NESHAP requires control technology to be installed by January 25, 1997. California has applied for an equivalency determination of its rule under section 112(l) of the CAA, including State MRR requirements. The EPA is not extending the date by which control technology must be installed in this action, only the date by which California sources subject to the rule must meet the Federal MRR requirements. This extension is not considered for similar sources in other States because no other State has a pre-existing State regulation that requires the installation of equivalent control technology by January 25, 1997, nor is any other State seeking an equivalency determination with the Federal rule.

III. Impacts

The extension on the MRR compliance dates for some sources in California will not have any detrimental environmental effects because there is no delay in installation of control technology; thus, there is no impact on the estimated emissions reduction or the control cost for the rule.

IV. Public Participation

EPA is issuing this final rule without prior notice and comments. This expedited rulemaking procedure is based on the need to act expeditiously to ensure that subject California sources are not required to meet both the Federal and State MRR requirements on January 25, 1997, provided such sources comply with the State regulations. In support of this action, EPA has contacted and received input from a significant number of interested parties. EPA believes these circumstances provide good cause under 5 U.S.C. 553(b) and CAA section 307(d)(1) to expedite this rulemaking. EPA finds that notice and comment procedures under section 307(d) are impracticable and contrary to the public interest based on the limited time before January 25, 1997, and the fact that the subject California sources will have installed the requisite controls as required by the Chromium NESHAP.

At the same time EPA is providing 30 days for submission of public comments. EPA will consider all written comments submitted in the allotted time period to determine if any change to this rule is necessary.

V. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB number 1611.02) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NESHAP should have no impact on the information collection burden estimates made previously. Today's action merely extends the date of compliance with the MRR requirements in the rule for the existing affected sources in California. These changes do not impose new requirements. Consequently, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the proposed 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 lead to 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 in 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.

The Chrome Electroplating NESHAP promulgated on January 25, 1995 was determined by OMB to be a ''significant regulatory action'' within the meaning of the Executive Order. For this reason OMB reviewed the final rule as promulgated. However, today's action merely extends for certain sources the compliance deadline for MRR requirements. These changes do not add any additional control requirements or costs. Therefore, this regulatory action does not affect the previous decision and is not considered to be significant.

C. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedures Act (APA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA, as amended.

D. Unfunded Mandates

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

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Reform Act do not apply to this action.

List of Subjects in 40 CFR Part 63

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

Dated: January 24, 1997.

Carol M. Browner,

Administrator.

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

PART 63—[AMENDED]

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

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

Subpart N—National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

2. Section 63.347 is amended by revising paragraph (e)(4) to read as follows:

§ 63.347 Reporting requirements.

* * * * *

(e) * * *

(4) For sources that are not required to complete a performance test in accordance with § 63.343(b), the notification of compliance status shall be submitted to the Administrator no later than 30 days after the compliance date specified in § 63.343(a), except, the date on which sources in California shall monitor the surface tension of the anodizing bath is extended from January 25, 1997, to July 24, 1997.

* * * * *

[FR Doc. 97–2326 Filed 1–29–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–127; RM–8676; RM–8726]

Radio Broadcasting Services; Comobabi, Florence, Oracle, and San Carlos, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 276C2 from San Carlos to Florence, Arizona, as a Class C1 channel, and modifies the authorization of Desert West Air Ranchers Corporation for Station KCDX(FM) to specify operation on Channel 276C1 at Florence, pursuant to the provisions of Section 1.420 (g) and (i) of the Commission's Rules, in response to a counterproposal filed by Desert West Air Ranchers (''Desert West'') (RM–8726). See 60 FR 40146, August 7, 1995. The allotment of Channel 276C1 to Florence will provide that community with its first local aural transmission service, and enable Station KCDX(FM) to expand its coverage area. Channel 292A is substituted for Channel 279A at

Oracle, Arizona, to accommodate the Florence allotment and modification, and the license of Desert West for Station KLQB(FM), Oracle, is modified accordingly. Additionally, Channel *275A is substituted for vacant Channel *276A at Comobabi, Arizona, as requested by Desert West. Although a proposal to allot a second Class A channel to Oro Valley, Arizona, initiated this proceeding in response to a petition filed by Rita Bonilla (RM–8676), it will be addressed in the context of a Second Report and Order, pending concurrence of the Mexican government thereto. Coordinates used for Channel 276C1 at Florence, Arizona, are 33–03–30 and 110–47–00; coordinates used for Channel 292A at Oracle, Arizona, are 32–37–07 and 110–47–20; coordinates used for Channel *275A at Comobabi, Arizona, are 32–07–30 and 111–53–00. As Florence, Oracle and Comobabi are located within 320 kilometers (199 miles) of the Mexican border, the Commission obtained concurrence of the Mexican government to the allotment proposals at each of those communities. With this action, the proceeding is terminated with regard to RM–8726.

EFFECTIVE DATE: March 10, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's First Report and Order, MM Docket No. 95–127, adopted January 21, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel *276A and adding Channel *275A at Comobabi.

3. § 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Florence, Channel 276C1.

4. § 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 279A and adding Channel 292A at Oracle.

5. § 73.202(b), the Table of FM Allotments under Arizona, is amended by removing San Carlos, Channel 276C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–2144 Filed 1–29–97; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1805, 1815, 1831, 1834, 1835, 1836, 1837, 1839, 1841, 1852, 1870, 1871, and 1872

Rewrite of the NASA FAR Supplement (NFS)

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: As part of the National Performance Review initiative to streamline and clarify regulations, NASA is revising its regulations in 48 CFR part 1834, Major System Acquisitions; part 1835, Research and Development Contracting; part 1836, Construction and Architect-Engineer Contracts; part 1837, Service Contracting; part 1839, Acquisition of Information Technology; and part 1841, Acquisition of Utility Services. This rule also adds a new part 1872 on Acquisitions of Investigations and amends part 1815, Contracting by Negotiation, to reflect these other regulatory changes.

This rule restores some sections in part 1831, Contract Cost Principles and Procedures, and in part 1852, Solicitation Provisions and Contract Clauses, that were inadvertently removed in a final rule published October 28, 1996 (61 FR 55753).

This rule amends part 1871, Midrange Procurement Procedures, in order to conform its provisions to those of recently established FAR regulations on a test program for certain commercial items. Also in this rule, the numbering of regulatory sections has been changed to indicate the exact section of the FAR being implemented or supplemented.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Toole, (202) 358–0478; Mr. Bruce King, (202) 358–0461.

SUPPLEMENTARY INFORMATION:

Background

The National Performance Review urged agencies to streamline and clarify their regulations. The NFS rewrite initiative was established to pursue these goals by conducting a section by section review of the NFS to verify its accuracy, relevancy, and validity. The NFS will be rewritten in blocks of parts and issued through Procurement Notices (PNs). Upon completion of all parts, the NFS will be reissued in a new edition.

Impact

NASA certifies that this regulation 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.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1805, 1815, 1831, 1834, 1835, 1836, 1837, 1839, 1841, 1852, 1870, 1871, and 1872

Government Procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1805, 1815, 1831, 1834, 1835, 1836, 1837, 1839, 1841, 1852, 1870, 1871 and 1872 are amended as follows:

1. The authority citation for 48 CFR Part 1805 continues to read as follows:

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

PART 1805—PUBLICIZING CONTRACT ACTIONS

1805.303–71 [Amended]

2. In section 1805.303–71, the section heading and paragraphs (a) introductory text and (a)(3) are revised to read as follows:

1805.303–71 Administrator's notice of significant contract actions (ANOSCAs).

(a) In addition to the public announcement requirements described in 1805.303–70, contracting officers shall notify the Administrator of the following significant actions at least five (5) workdays prior to planned public announcement of the actions:

* * * * *

(3) Planned award of other actions, to include cooperative agreements resulting from a Cooperative Agreement Notice (CAN), at any dollar value

thought to be of significant interest to Headquarters.

* * * * *

PART 1815—CONTRACTING BY NEGOTIATION

1815.807 [Amended]

3.–6. In section 1815.807, paragraph (b)(ii) is revised to read as follows:

1815.807 Prenegotiation objectives.

(b)(i) * * *

(ii) A prenegotiation position memorandum is not required for contracts awarded under the competitive negotiated procedures of FAR 15.6 and 1815.6.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

1831.205–670, 1831.205–671 [Added]

7. Sections 1831.205–670 and 1831.205–671 are added to read as follows:

1831.205–670 Evaluation of contractor and subcontractor compensation for service contracts.

(a) The contracting officer shall evaluate the reasonableness of compensation for service contracts:

(1) Prior to the award of a cost reimbursement or non-competitive fixed-price type contract which has a total potential value in excess of $500,000, and

(2) Periodically after award for cost reimbursement contracts, but at least every three years.

(b) The contracting officer shall ensure the reasonableness of compensation is evaluated for cost reimbursement or non-competitive fixed-price type service subcontracts under a prime contract meeting the criteria in paragraph (a)(1) of this section where:

(1) The subcontract has a total potential value in excess of $500,000; and

(2) The cumulative value of all of a subcontractor's service subcontracts under the prime contract is in excess of 10 percent of the prime contract's total potential value.

(c)(1) Offerors shall be required to submit as part of their proposals a compensation plan addressing all proposed labor categories. Offerors also shall demonstrate in writing that their proposed compensation is reasonable.

(2) Subcontractors meeting the criteria in paragraph (b) of this section shall be required to comply with paragraph (c)(1).

(d) The contracting officer's preaward evaluation of each offeror's and their subcontractors' compensation should be done as part of, or in addition to DCAA audits, price analyses, or any other means deemed to be necessary.

(e) The results of the contracting officer's evaluation, including any excessive compensation found and its planned resolution, shall be addressed in the prenegotiation position memorandum, with the final resolution discussed in the price negotiation memorandum.

(f) The contracting officer shall ensure that the reasonableness of compensation for cost reimbursement subcontracts meeting the criteria in paragraphs (b) (1) and (2) of this section is periodically reviewed after award, but at least every three years.

(g) The results of the periodic evaluations of contractor and subcontractor compensation after contract award shall be documented in the contract file.

1831.205–671 Solicitation provision.

The contracting officer shall insert a provision substantially the same as the provision at 1852.231–71, Determination of Compensation, in solicitations for services which contemplate the award of a cost reimbursement or non-competitive fixed-price type service contract having a total potential value in excess of $500,000.

8. Part 1834 is revised to read as follows:

PART 1834—MAJOR SYSTEM ACQUISITION

Subpart 1834.0—General

Sec.
1834.003 Responsibilities.

Subpart 1834.70—Acquisition of Major Systems

1834.7001 Definitions.
1834.7002 Phased acquisitions
1834.7003 Down selections in phased acquisitions.
1834.7003–1 Pre-solicitation planning.
1834.7003–2 Evaluation factors.
1834.7003–3 Down selection milestones.
1834.7003–4 Synopsis.
1834.7003–5 Progressive competition.
1834.7004 Contract clauses.

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

Subpart 1834.0—General

1834.003 Responsibilities. (NASA supplements paragraph (a))

(a) NASA's implementation of OMB Circular No. A–109, Major Systems Acquisitions, and FAR part 34 is contained in this part and in NASA Policy Directive (NPD) 7120.4, ''Program/Project Management,'' and NASA Procedures and Guidance (NPG) 7120.5, ''Program/Project Management Guide''.

Subpart 1834.70—Acquisition of Major Systems

1834.7001 Definitions.

(a) Down-selection. In a phased acquisition, the process of selecting contractors for phases subsequent to the initial phase from among the preceding phase contractors.

(b) Major system. For NASA, ''major system'' is a program fitting the criteria of FAR 34.003(c) in lieu of the definition provided in FAR 2.101.

(c) Phased acquisition. A program comprised of several distinct steps or phases where the realization of program objectives requires a planned, sequential acquisition of each step or phase. The phases may be acquired separately, in combination, or through a down-selection strategy.

(d) Progressive competition. A type of down-selection strategy for a phased acquisition. In this method, a single solicitation is issued for all phases of this program. The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors. In each phase, progressively fewer contracts are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

1834.7002 Phased acquisitions.

(a) In acquisitions subject to the provisions of OMB Circular No. A–109 and NPD 7120.4 and NPG 7120.5, or other similar phased acquisitions, it is NASA policy to ensure competition in the selection of contractors for award in each phase of the process not performed in-house.

(b) There are five phases in the life cycle of a NASA major system acquisition:

(1) Phase A, Preliminary Analysis, involves the analysis of alternate overall project concepts for accomplishing a proposed agency technical objective or mission.

(2) Phase 3, Definition, involves the detailed study, comparative analysis, and preliminary system design of selected Phase A concepts.

(3) Phase C, Design, involves the detailed system design (with mock-ups and test articles of critical systems and

subsystems) of the systems design concept determined to provide the best overall system for the Government.

(4) Phase D, Development, involves final detailed design, fabrication, delivery of an operational system that meets program requirements.

(5) Phase E, Operations, involves operation and use of the system in its intended environment, continuing until the system leaves the agency inventory. This phase includes any system modifications and upgrades.

(c) The preferred approach in NASA for the acquisition of the phases of a Major System is the following:

(1) Phase A is accomplished primarily through in-house studies.

(2) Phases B, C, and D are acquired through a phased acquisition process in which two or more Phase B contracts are awarded competitively and then a down-selection is made among these contractors to determine the single combined Phase C/D awardee.

(3) Phase E is normally acquired separately.

(d) Each phase of a major system acquisition not performed in-house must be synopsized in accordance with FAR 5.201 and must include all the information required by FAR 5.207.

(e) Whether or not down-selection procedures are used, contracts awarded in phased acquisitions shall not include requirements for submission of subsequent phase proposals. Instead, proposals shall be requested through a solicitation or other appropriate mechanism (e.g., by letter when using the progressive competition technique). Priced options for preparation of subsequent phase proposals are prohibited.

(f) Time gaps between phases should be minimized in all major system phased acquisitions. Accordingly, early synopsis of subsequent phase competition is encouraged. Also, when sufficient programmatic and technical information is available to all potential offerors, proposal evaluation and source selection activities need not be delayed until completion of a given phase. When appropriate, these activities should commence as early as practicable during the period of performance of a phase to ensure the expeditious award of the succeeding phase.

1834.7003 Down-selections in phased acquisitions.

1834.7003–1 Pre-solicitation planning.

(a) The rationale for the use of the down-selection technique shall be thoroughly justified in the acquisition planning requirement. Because the Phase B solicitation will also lead to Phase C/D award, the decision to use a down-selection strategy must be made prior to initiation of the Phase B acquisition. Accordingly, both phases must be addressed in the initial acquisition strategy planning and documented in the acquisition plan or ASM minutes.

(b) If there is no direct link between successful performance in the preceding phase and successful performance in the subsequent phase, down-selection is inappropriate. In this case, the major system acquisition phases should be contracted for separately without a down-selection between phases.

(c) With one exception, both the initial and subsequent phase(s) of a major system acquisition down-selection process are considered to be full and open competition if the procedures in 1834.7003–4 and 1834.7003–5 (if using the progressive competition technique) are followed. If only one contractor successfully completed a given phase and no other offers are solicited for the subsequent phase, award of the subsequent phase may be made only if justified by one of the exceptions in FAR 6.302 or one of the exclusions in FAR 6.2, and only after compliance with the synopsis requirements of FAR 5.202 and 5.205, when appropriate.

1834.7003–2 Evaluation factors.

A separate set of evaluation factors must be developed for each phase in a down-selection competition. Since these competitive down-selection strategies anticipate that one of the Phase B contractors will also be the Phase C/D contractor, the Phase B offerors must clearly demonstrate the ability to perform the subsequent phases. The evaluation factors for Phase B award must specifically include the evaluation of the Phase B offerors' abilities to perform Phase C/D as well as Phase B.

1834.7003–3 Down-selection milestones.

The Phase B contracts should be structured to allow for down-selection at a discrete performance milestone such as a significant design review or at contract completion. This will avoid time gaps between phases and eliminate unnecessary duplication of effort and the need to terminate the remaining Phase B efforts of an unsuccessful Phase C/D offeror. However, the appropriate contract structure must reflect program technical objectives as well as schedule considerations. For example, if the acquisition strategy calls for formal completion of Phase B effort at Preliminary Design Review (PDR), but it is not financially practical or technically necessary for Phase C/D award and performance to carry all Phase B contractors through PDR, the Phase B contracts should be structured with a basic period of performance through a significant, discrete milestone before PDR with a priced option for effort from that milestone to PDR. The down-selection would occur at the earlier milestone, the PDR option exercised only for the down-selection winner, and Phase C/D performance begun at the completion of the PDR option. Any down-selection milestone must ensure that sufficient design maturity exists to allow for an informed selection decision leading to a successful completion of Phase C/D.

1834.7003–4 Synopsis.

(a) When the phased acquisition process identified in 1834.7002(c)(2) is used, the synopsis for the initial competitive phase, normally Phase B, should also state the following:

(1) The Government plans to conduct a phased acquisition involving a competitive down-selection process. (Include a description of the process and the phases involved).

(2) Subsequent competitions for identified follow-on phases will build on the results of previous phases.

(3) The award criteria for subsequent phases will include demonstrated completion of specified previous phase requirements.

(4) The Government expects that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s). Proposals for the subsequent phase(s) will be automatically requested from these contractors.

(5) The Government intends to issue (or not issue) a new, formal solicitation(s) for subsequent phase(s). If new solicitations are not planned, the acquisition must be identified as a ''progressive competition'' (see 1834.7003–5), and the mechanism for providing pertinent subsequent phase proposal information (e.g., statements of work, specifications, proposal preparation instructions, and evaluation factors for award) must be described.

(6) Each subsequent phase of the acquisition will be synopsized.

(7) Notwithstanding the expectation that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s), proposals from all responsible sources submitted by the specified due date will be considered by the agency. In order to contend for subsequent phase awards, however, such prospective offerors must demonstrate a design maturity equivalent to that of the prior phase contractors. Failure to fully and

completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(b) In addition to the information in paragraph (a) of this section, the synopsis for the subsequent phases, normally a combined C/D, must identify the current phase contractors.

1834.7003–5 Progressive competition.

(a) To streamline the major system acquisition process, the preferred approach for NASA phased acquisitions is the ''progressive competition'' down-selection technique in which new, formal solicitations are not issued for phases subsequent to the initial phase. Subsequent phase proposals are requested by less formal means, normally by a letter accompanied by the appropriate proposal preparation and evaluation information.

(b) When using the progressive competition technique, if a prospective offeror other than one of the preceding phase contractors responds to the synopsis for a subsequent phase and indicates an intention to submit a proposal, the contracting officer shall provide to that offeror all the material furnished to the preceding phase contractors necessary to submit a proposal. This information includes the preceding phase solicitation, contracts, and system performance and design requirements, as well as all proposal preparation instructions and evaluation factors. In addition, the prospective offerors must be advised of all requirements necessary for demonstration of a design maturity equivalent to that to the preceding phase contractors.

(c) Although a key feature of the progressive competition technique is that a formal solicitation is issued for the initial phase only, a new, formal solicitation may nonetheless be required for subsequent phases. When the Government requirements or evaluation procedures change so significantly after release of the initial phase solicitation that a substantial portion of the information provided in the initial phase synopsis, solicitation, or contract is invalidated, a new solicitation shall be issued for the next phase.

(d) Phase C/D proposals should be requested by a letter including the following:

(1) A specified due date for the proposals along with a statement that FAR 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals, applies to this proposal due date.

(2) Complete instructions for proposal preparation, including page limitations, if any.

(3) Final evaluation factors.

(4) Any statement of work, specifications, or other contract requirements that have changed since the Phase B solicitation.

(5) All required clause changes applicable to new work effective since Phase B contract award.

(6) Any representations or certifications, if required.

(7) Any other required contract updates (e.g., Phase C/D small and small disadvantaged business goals).

(e) Certain factors may clearly dictate that the progressive competition techniques should not be used. For example, if it is likely that NASA may introduce a design concept independent of those explored by the Phase B contractors, it is also likely that a new, formal solicitation is necessary for Phase C/D and all potential offerors should be solicited. In this circumstance, progressive competition is inappropriate.

1834.7004 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.234–70, Phased Acquisition Using Down-Selection Procedures, in solicitations and contracts for phased acquisitions using down-selection procedures other than the progressive competition technique described in 1834.7003–5. The clause shall be included in the solicitation for each phase and in all contracts except that for the final phase.

(b) The contracting officer shall insert the clause at 1852.234–71, Phased Acquisition Using Progressive Competition Down-Selection Procedures, in solicitations and contracts for phased acquisitions using the progressive competition technique described in 1834.7003–5. The clause shall be included in the initial phase solicitation and all contracts except that for the final phase.

9. Part 1835 is revised to read as follows:

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

1835.003 Policy.
1835.015 Contracts for research with educational institutions and nonprofit organizations.
1835.016 Broad agency announcements.
1835.016–70 NASA Research Announcements.
1835.070 NASA contract clauses and solicitation provision.

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

1835.003 Policy.

See NPG 5800.1, Grant and Cooperative Agreement Handbook, for policy regarding the use of grants and cooperative agreements.

1835.015 Contracts for research with educational institutions and nonprofit organizations. (NASA supplements paragraph (a))

(a)(1)(iv) The research contract shall include a requirement that the contractor obtain the contracting officer's approval when it plans to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator or project leader.

1835.016 Broad agency announcements. (NASA supplements paragraphs (a) and (c))

(a)(i) The following forms of broad agency announcements (BAAs) are authorized for use:

(A) Announcements of Opportunity (see 1872).

(B) NASA Research Announcements (see 1835.016–70).

(C) Other forms of announcements approved by the Associate Administrator for Procurement (Code HS).

(ii) Other program announcements, notices, and letters not authorized by paragraph (a)(i) of this section shall not be used to solicit proposals that may result in contracts.

(c) BAAs may not preclude the participation of any offeror capable of satisfying the Government's needs unless a justification for other than full and open competition is approved under FAR 6.304.

1835.016–70 NASA Research Announcements

(a) Scope. An NRA is used to announce research interests in support of NASA's programs, and, after peer or scientific review using factors in the NRA, select proposals for funding. Unlike an RFP containing a statement of work or specification to which offerors are to respond, an NRA provides for the submission of competitive project ideas, conceived by the offerors, in one or more program areas of interest. An NRA shall not be used when the requirement is sufficiently defined to specify an end product or service.

(b) Issuance. (1) Before issuance, each field-generated NRA shall be approved by the installation director or designee, with the concurrence of the

procurement officer, and each Headquarters-generated NRA shall be approved by the cognizant Program Associate Administrator or designee, with the concurrence of the Headquarters Offices of General Counsel (Code GK) and Procurement (Code HS). The NRA approval authority shall designate the selection official.

(2) The selecting official shall assure that the NRA is synopsized prior to issuance in accordance with FAR 5.201 and 1815.201. The synopsis shall be brief, and the technical section describing the area of interest should not exceed 50 words.

(3) If a Headquarters-generated NRA may result in awards by a NASA field installation, the issuing office shall notify the installation procurement officer and provide a copy of the NRA.

(4) The selecting official is responsible for the preparation and distribution of the NRA.

(5) NRAs normally shall remain open for at least 90 days.

(c) Content. The NRA shall consist of the following sections and items. The entire package shall be provided in response to requests.

(1) Cover. The cover shall display:

(i) ''OMB Approval Number 2700–0087'' in the upper right corner.

(ii) Title.

(iii) ''NASA Research Announcement Soliciting Research Proposals for the Period Ending _____''.

(iv) NRA number.

(v) Official address for the office issuing the NRA.

(2) Summary and Supplemental Information. (i) The Summary and Supplemental Information should not exceed two pages and shall include:

(A) Title and NRA number.

(B) Introductory paragraphs describing the purpose of the NRA and the period for receipt of proposals.

(C) Address for submitting proposals.

(D) Number of copies required.

(E) Selecting official's title.

(F) Names, addresses, and telephone numbers for the technical and contracting points of contact.

(G) The following statement when the NRA is to be issued before funds are available:

Funds are not currently available for awards under this NRA. The Government's obligation to make award(s) is contingent upon the availability of appropriated funds from which payment can be made and the receipt of proposals that NASA determines are acceptable for award under this NRA.

(ii) The Summary and Supplemental Information may include estimates of the amount of funds that will be available and the number of anticipated awards. A breakdown of the estimates by research area may also be shown.

(3) Technical Description. The first page shall contain the NRA number and title at the top. A brief description not exceeding two pages is preferable, but it should be detailed enough to enable ready comprehension of the research areas of interest. Specifications containing detailed statements of work should be avoided. Any program management information included must be limited to matters that are essential for proposal preparation.

(4) Instructions for Responding to NASA Research Announcements. The NRA shall contain instructions as stated in 1852.235–72 (see 1835.070(c)).

(d) Receipt of proposals, evaluation, and selection. (1) Proposals shall be protected as provided in 1815.508–70 and 1815.509–70.

(2) Late proposals and modifications shall be treated in accordance with 1815.412–70.

(3) The selection decision shall be made following peer or scientific review of a proposal. Peer or scientific review shall involve evaluation by an in-house specialist, a specialist outside NASA, or both. Evaluation by specialists outside NASA shall be conducted subject to the conditions in FAR 15.413–2(f) and 1815.413–2. After receipt of a proposal and before selection, scientific or engineering personnel shall communicate with an offeror only for the purpose of clarification (as defined in FAR 15.601), or to understand the meaning of some aspect of the proposal that is not clear, or to obtain confirmation or substantiation of a proposed approach, solution, or cost estimate.

(4) Competitive range determinations shall not be made, and best and final offers shall not be requested.

(5) Part of a proposal may be selected unless the offeror requests otherwise. In addition, changes to a selected proposal may be sought if (i) the ideas or other aspects of the proposal on which selection is based are contained in the proposal as originally submitted, and are not introduced by the changes; and (ii) the changes sought would not involve a material alteration to the requirements stated in the NRA. Changes that would affect a proposal's selection shall not be sought. When changes are desired, the selecting official may request revisions from the offeror or request the contracting officer to implement them during negotiations with the successful offeror(s). The changes shall not transfer information from one offeror's proposal to another offeror (see FAR 15.610(e)(1)). When collaboration between offerors would improve proposed research programs, collaboration may be suggested to the offerors.

(6) The basis for selection of a proposal shall be documented in a selection statement applying the evaluation factors in the NRA. The selection statement represents the conclusions of the selecting official and must be self-contained. It shall not incorporate by reference the evaluations of the reviewers.

(7) The selecting official shall notify each offeror whose proposal was not selected for award and explain generally why the proposal was not selected. If requested, the selecting official shall arrange a debriefing under FAR 15.1004, with the participation of a contracting officer.

(8) The selecting official shall forward to the contracting officer the following information:

(i) A copy of the NRA;

(ii) The results of the technical evaluation, including the total number of proposals received, the selection statement, and the proposal(s) selected for funding;

(iii) A description of any changes desired in any offeror's statement of work, including the reasons for the changes and any effect on level of funding;

(iv) If a contract will be used to fund the proposal, a description of deliverables, including technical reports, and delivery dates, consistent with the requirements of the NRA;

(v) A procurement request;

(vi) Comments on the offeror's cost proposal (either the selecting official's comments, which may be based on the reviewer's comments, or copies of the reviewers' comments with any different conclusions of the selecting official); these comments shall address the need for and reasonableness of travel, computer time, materials, equipment, subcontracted items, publication costs, labor hours, labor mix, and other costs; and

(vii) A copy of the selected proposal as originally submitted, any revisions, and any correspondence from the successful offeror.

(9) The selecting official may provide to the contracting officer copies of the reviewers' evaluations. Reviewers' names and institutions may be omitted.

(10) The selecting official may provide each offeror whose proposal was selected for negotiation a notification stating:

(i) The proposal has been selected for negotiation;

(ii) The offeror's business office will be contacted by a contracting officer,

who is the only official authorized to obligate the Government; and

(iii) Any costs incurred by the offeror in anticipation of an award are at the offeror's risk.

(e) Award. The contracting officer shall choose the appropriate award instrument. If a contract is selected, the contracting officer shall——

(1) Advise the offeror that the Government contemplates entering into negotiations; the type of contract contemplated; and the estimated award date, anticipated effort, and delivery schedule;

(2) Send the offeror a model contract, if necessary, including modifications contemplated in the offeror's statement of work, and request agreement or identification of any exceptions (the contract statement of work may summarize the proposed research, state that the research shall be conducted in accordance with certain technical sections of the proposal (which shall be identified by incorporating them into the contract by reference), and identify any changes to the proposed research);

(3) Request the offeror to complete and return certifications and representations and Standard Form 33, Solicitation, Offer, and Award, or other appropriate forms;

(4) Conduct negotiations in accordance with FAR subparts 15.8 and 15.9, as applicable;

(5) Award a contract; and

(6) Comply with FAR subparts 4.6 and 5.3 on contract reporting and synopses of contract awards.

(f) Cancellation of an NRA. when program changes, program funding, or any other reasons require cancellation of an NRA, the office issuing the NRA shall notify potential offerors by using the mailing list of the NRA.

1835.070 NASA contract clauses and solicitation provision.

(a) The contracting officer shall insert the clause at 1852.235–70, Center for AeroSpace Information, in all research and development contracts and in cost-reimbursement supply contracts involving research and development work.

(b) The contracting officer shall insert the clause at 1852.235–71, Key Personnel and Facilities, in contracts when source selection has been substantially predicated upon the possession by a given offer or of special capabilities, as represented by key personnel or facilities.

(c) The contracting officer shall ensure that the provision at 1852.235–72, Instructions for Responding to NASA Research Announcements, is inserted in all NRAs. The instructions may be supplemented, but only to the minimum extent necessary.

10. Part 1836 is revised to read as follows:

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1836.2—Special Aspects of Contracting for construction

Sec.
1836.203 Government estimate of construction costs.
1836.209 Construction contracts with architect-engineer firms.

Subpart 1836.3—Special Aspects Sealed Bidding in Construction Contracts

1836.303 Invitations for bids.
1836.303–70 Additive and deductive items.
1836.304 Notice of Award.

Subpart 1836.5—Contract Clauses

1836.570 NASA solicitation provisions and contract clause.

Subpart 1836.6—Architect-Engineer Services

1836.602 Selection of firms for architect-engineer contracts.
1836.602–1 Selection criteria.
1836.602–2 Evaluation boards.
1836.602–4 Selection authority.
1836.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.
1836.602–70 Selection of architect-engineers for master planning.
1836.603 Collecting data on and appraising firms' qualifications.
1836.605 Government cost estimate for architect-engineer work.

Subpart 1836.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services.

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

Subpart 1836.2—Special Aspects of Contracting for Construction

1836.203 Government estimate of construction costs. (NASA supplements paragraph (c))

(c)(i) If the acquisition is by sealed bidding, the contracting officer shall file a sealed copy of the detailed Government estimate with the bids until bid opening. After the bids are read and recorded, the contracting officer shall read the estimate, and record it in the same detail as the bids.

(ii) If the acquisition is by negotiation, the contracting officer may disclose the overall amount of the Government estimate after award upon request of offerors.

1836.209 Construction contracts with architect-engineer firms.

(1) Except as indicated in paragraph (2) of this section, the Associate Administrator for Procurement (Code HS) is the approval authority.

(2) A construction contract may be awarded to the firm that designed the project (or its subsidiaries or affiliates) if the contract is awarded on the basis of performance specifications for the construction of a facility, and it requires the contractor to furnish construction drawings, specifications, or site adaptation drawings of the facility.

(3) In no case shall the firm that prepared the drawings and specifications supervise and inspect, on behalf of the Government, the construction of the facility involved.

Subpart 1836.3—Special Aspects of Sealed Bidding in Construction Contracts

1836.303 Invitations for bids.

1836.303–70 Additive and deductive items.

When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the invitation for bids for a first or base bid item covering the work generally as specified and one or more additive or deductive bid items progressively adding or omitting specified features of the work in a stated order of priority. In such case, the contracting officer, before the opening of bids, shall record in the contract file the amount of funds available for the project and determine the low bidder and the items to be awarded in accordance with the provision at 1852.236–71, Additive or Deductive Items.

1836.304 Notice of Award (NASA supplements paragraph (e))

(e) Contract delivery or performance schedules, commencement of work, or notices to proceed shall not be expressed in terms of a notice of award (See 1814.408–1).

Subpart 1836.5—Contract Clauses

1836.570 NASA solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 1852.236–71, Additive or Deductive Items, in invitations for bids for construction when it is desired to add or deduct bid items to meet available funding.

(b) The contracting officer shall insert the provision at 1852.236–72, Bids with Unit Prices, in invitations for bids for construction when the invitation contemplates unit prices of items.

(c) The contracting officer shall insert the clause at 1852.236–73, Hurricane Plan, in solicitations and contracts for construction at sites that experience hurricanes.

(d) The contracting officer shall insert the provision at 1852.236–74, Magnitude of Requirement, in solicitations for construction. Insert the appropriate estimated dollar range in accordance with FAR 36.204.

Subpart 1836.6—Architect-Engineer Services

1836.602 Selection of firms for architect-engineer contracts.

1836.602–1 Selection criteria. (NASA supplements paragraph (a))

(a)(2) The evaluation of specialized experience and technical competence shall be limited to the immediately preceding ten years.

(4) The evaluation of past performance shall be limited to the immediately preceding ten years.

(7) The architect-engineer selection board may also establish evaluation criteria regarding the volume of work previously awarded to the firm by NASA, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms, including minority-owned firms and firms that have not had prior NASA contracts.

1836.602–2 Evaluation boards. (NASA supplements paragraph (a))

(a) Installations shall establish an architect-engineer selection board to be composed of the selection authority and at least three voting members. Membership shall at least include: one currently registered architect or professional engineer, who shall serve as the board chairperson; an official from the requiring office; if appropriate, a technical official familiar with any unique subject matter critical to the requirement; and a procurement official (a contracting officer, if feasible) as an ad hoc advisor to the board. Where appropriate, the procurement official may serve as a voting member. Non-Government employees shall not be appointed as voting members.

1836.602–4 Selection authority. (NASA supplements paragraph (a))

(a) The selection authority shall be appointed in accordance with installation procedures.

1836.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

The procedures at FAR 36.602–5 (a) or (b) may be used at the discretion of the selection authority.

1836.602–70 Selection of architect-engineers for master planning. (NASA supplements paragraphs (a) and (b))

(a) *Definition of master plan.* A master plan is an integrated series of documents presenting in graphic, narrative, and tabular form the present composition of the installation and the plan for its orderly and comprehensive development to perform its various missions in the most efficient and economical manner.

(b) *Selection.*

(1) Selection of an Architect-Engineer for the development of a master plan in connection with the establishment of a new NASA activity or installation shall be made by the Associate Administrator having institutional responsibility. The report of the architect-engineer selection board will be concurred in at NASA Headquarters by the Associate Administrator for Management Systems and Facilities, the Associate Administrator for Procurement, the Chief Financial Officer, and the General Counsel.

(2) The Associate Administrator for Management Systems and Facilities shall be responsible for the architect-engineer selection board report required by FAR 36.602–3(d) before presentation to the Associate Administrator having institutional responsibility.

1836.603 Collecting data on and appraising firms' qualifications.

The architect-engineer selection boards (see 1836.602–2) are designated as NASA's evaluation boards for the purposes of FAR 36.603.

1836.605 Government cost estimate for architect-engineer work. (NASA supplements paragraph (b))

(b) The contracting officer may disclose the overall amount of the Government estimate after award upon request of offerors.

Subpart 1836.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services. (NASA supplements paragraph (a))

(a)(i) Instructions for completing Standard Form 252, Architect-Engineer Contract, are as follows:

(a) Block 5-Project Title and Location. Include a short description of the construction project and the estimated cost of constructing the facilities for the project. If the space provided is insufficient, include a more detailed description in the contract's specification/work statement and identify the location of the more detailed description in Block 10.

(b) Block 6-Contract For (General description of services to be provided). Include a brief description of the services and state that the are fully set out in the specification/work statement. Clearly specify the date by which design services must be completed. If supervision and inspection services during construction are to be acquired, clearly specify the date by which they must be completed and add a statement that the Government may extend the period for their performance as provided in the Changes clause of the contract.

(c) Block 7-Contract Amount. If the contract is for both design and supervision and inspection services, set out the amounts for each effort separately.

(ii) The services to be furnished by an architect-engineer should be carefully defined during negotiation of the contract and a statement of them inserted in the contract's specification/work statement. The statement should clearly and concisely set forth the nature and extent of the services and include any special services, such as the nature and extent of subsurface exploration prior to designing foundations. A similar statement of supervision and inspection services should be inserted in the specification/work statement if supervision and inspection services are to be acquired.

11. Part 1837 is revised to read as follows:

PART 1837—SERVICE CONTRACTING

Subpart 1837.1—Service Contracts—General

Sec.
1837.101 Definitions.
1837.102 Policy.
1837.102–70 NASA policy.
1837.104 Personal services contracts.
1837.110 Solicitation provisions and contract clauses.
1837.110–70 NASA solicitation provision and contract clauses.
1837.170 Pension portability.

Subpart 1837.2—Advisory and Assistance Services

1837.203 Policy.
1837.204 Guidelines for determining availability of personnel.

Subpart 1837.70—Acquisition of Training

1837.7000 Acquisition of off-the-shelf training courses.
1837.7001 Acquisition of new training courses.

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

Subpart 1837.1—Service Contracts—General

1837.101 Definitions.

Pension portability means the recognition and continuation in a successor service contract of the predecessor service contract employees' pension rights and benefits.

1837.102 Policy.

1837.102–70 NASA Policy.

To the maximum extent practicable, contracting officers shall acquire services on a performance based contracting basis.

1837.104 Personal services contracts. (NASA supplements paragraph (b))

(b) Section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)) authorizes NASA ''to obtain services as authorized by Section 3109 of Title 5, United States Code.'' It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities, and procedures pertaining to the appointment of experts and consultants are in NMI 3304.1G.

1837.110 Solicitation provisions and contract clauses.

1837.110–70 NASA solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.237–70, Emergency Evacuation Procedures, in solicitations and contracts for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornadoes, earthquakes, or other emergencies.

(b) The contracting officer shall insert the clause at 1852.237–71, Pension Portability, in solicitations, contracts or negotiated contract modifications for additional work when the procurement officer makes the determination in 1837.170(a)(2).

(c) The contracting officer shall insert the provision at 1852.237–72, Identification of Uncompensated Overtime, in cost reimbursement level-of-effort contracts expected to exceed $1,000,000.

1837.170 Pension portability.

(a) It is NASA's policy not to require pension portability in service contracts. However, pension portability requirements may be included in solicitations, contracts, or contract modifications for additional work under the following conditions:

(1)(i) There is a continuing need for the same or similar services for a minimum of five years (inclusive of options), and, if the contractor changes, a high percentage of the predecessor contractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor contract were covered by a portable pension plan, a follow-on contract or a contract consolidating existing services is awarded, and the total contract period covered by the plan covers a minimum of five years (including both the predecessor and successor contracts); and

(2) The procurement officer determines in writing, with full supporting rationale, that such a requirement is in the Government's best interest. The procurement officer shall maintain a record of all such determinations.

(b) When pension portability is required, the plan shall comply with the requirements of the clause at 1852.237–71, Pension Portability, (see 1837.110–70(b)), and the contract shall also include a clear description of the plan, including service, pay, liabilities, vesting, termination, and benefits from prior contracts.

Subpart 1837.2—Advisory and Assistance Services

1837.203 Policy. (NASA supplements paragraph (c))

(c) Advisory and assistance services of individual experts and consultants shall normally be obtained by appointment rather than by contract (see NMI 3304.1, Employment of Experts and Consultants).

1837.204 Guidelines for determining availability of personnel. (NASA supplements paragraphs (a), (b), (c), and (e))

(a)(i) Outside peer review evaluators may be used to evaluate SBIR, STTR, NRA, AO, and unsolicited proposals without making the determination of non-availability.

(ii) For all other actions, the NASA official one level above the NASA program official responsible for the evaluation shall make the determination, with the concurrence of the legal office. The contracting officer shall ensure that a copy of the determination is in the contract file prior to issuance of a solicitation.

(b) The official designated in paragraph (a)(ii) of this section is responsible for the actions required in FAR 37.204(b).

(c) The agreement shall be made by the program official responsible for the evaluation and the contracting officer.

(e) The Associate Administrator for Procurement (Code HS) is the approval authority for class determinations. The class determination request shall include the assessment required by FAR 37.204(b).

Subpart 1837.70—Acquisition of Training

1837.7000 Acquisition of off-the-shelf training courses.

The Training Act of 1958 (5 U.S.C. 4101 et seq.) may be used as the authority for training of NASA employees by, in, or through non-Government off-the-shelf training courses which are available to the public. These include established university catalog courses or commercial course offerings that are offered to the general public at catalog or market prices.

1837.7001 Acquisition of new training courses.

The acquisition of a new training course that must be developed to fulfill a specific NASA need shall be conducted in accordance with the FAR and the NFS.

12. Part 1839 is revised to read as follows:

PART 1839—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 1829.1—General

Sec.
1839.105 Privacy.
1839.106 Contract clause.
1839.106–70 NASA contract clause.

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

Subpart 1839.1—General.

1839.105 Privacy.

See 1804.470.

1839.106 Contract clause.

1839.106–70 NASA contract clause.

(a)(1) The contracting officer shall insert the clause substantially as stated at 1852.239–70, Alternate Delivery Points, in solicitations and contracts for information technology when:

(i) An indefinite delivery/indefinite quantity contract will be used or when the contract will include options for additional quantities; and

(ii) Delivery is F.O.B. destination to the contracting activity.

(2) When delivery is F.O.B. origin and Government bills of lading (GBL) are used, the contracting officer shall use the clause with its Alternate I.

13. Part 1841 is revised to read as follows:

PART 1841—ACQUISITION OF UTILITY SERVICES

Subpart 1841.2—Acquiring Utility Services

Sec.
1841.203 GSA assistance.
1841.205 Separate contracts.
1841.205–70 Authorization for acquisition of wellhead natural gas.

Subpart 1841.3—Requests for Assistance

1841.301 Requirements.

Subpart 1841.4—Administration

1841.402 Rate changes and regulatory intervention.

Subpart 1841.5—Solicitation Provision and Contract Clauses

1841.501 Solicitation provision and contract clauses.
1841.501–70 NASA contract clause.

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

Subpart 1841.2—Acquiring Utility Services

1841.203 GSA assistance. (NASA supplements paragraph (a))

(a) Before soliciting technical assistance, technical personnel shall contact the Headquarters Environmental Management Division (Code JE).

1841.205 Separate contracts.

1841.205–70 Authorization for acquisition of wellhead natural gas.

(a) Acquisition of wellhead natural gas and interstate transportation of the natural gas to locally franchised distribution utility companies' receipt points (city gate) is considered the acquisition of supplies rather than the acquisition of public utility services described in FAR Part 41. Therefore, wellhead natural gas and interstate transportation of such gas should be obtained directly by NASA under applicable authorities and FAR procedures governing the acquisition of supplies. Redelivery of the gas from the city gate to the NASA facility is considered a utility service since it is provided only by the locally franchised utility. GSA is responsible for obtaining an appropriate contract for the redelivery service in accordance with FAR 41.204.

(b) GSA provides assistance to Federal agencies in the acquisition of natural gas wellhead supplies. Contracting officers may obtain assistance from GSA in the acquisition of wellhead natural gas by contacting GSA at the address specified in FAR 41.301(a).

Subpart 1841.3—Requests for Assistance

1841.301 Requirements. (NASA supplements paragraph (a))

(a) Procurement officers shall submit requests for delegation of contracting authority directly to the cognizant GSA regional office after coordinating with the cognizant center technical office.

Subpart 1841.4—Administration

1841.402 Rate changes and regulatory intervention. (NASA supplements paragraph (b))

(b) A copy of all correspondence with GSA shall be provided to the Headquarters Office of Procurement (Code HS) at the time of its submittal to the GSA regional office.

Subpart 1841.5—Solicitation Provision and Contract Clauses

1841.501 Solicitation provision and contract clauses.

1841.501–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.241–70, Renewal of Contract, in solicitations and contracts for utility services if it is desirable that the utility service be provided under the same terms and conditions for more than 1 year.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.231–71 [Added]

14.–15. Section 1852.231–71 is added to read as follows:

1852.231–71 Determination of Compensation Reasonableness.

As prescribed at 1831.205–671, insert the following provision.

Determination of Compensation Reasonableness (March 1994)

(a) The proposal shall include a total compensation plan. This plan shall address all proposed labor categories, including those personnel subject to union agreements, the Service Contract Act, and those exempt from both of the above. The total compsensation plan shall include the salaries/wages, fringe benefits and leave programs proposed for each of these categories of labor. The plan also shall include a discussion of the consistency of the plan among the categories of labor being proposed. Differences between benefits offered professional and non-professional employees shall be highlighted. The requirements of this plan may be combined with that required by the clause at FAR 52.222–46, ''Evaluation of Compensation for Professional Employees.''

(b) The offeror shall provide written support to demonstrate that its proposed compensation is reasonable.

(c) The offeror shall include the rationale for any conformance procedures used or those Service Contract Act employees proposed that do not fall within the scope of any classification listed in the applicable wage determination.

(d) The offeror shall require all service subcontractors (1) with proposed cost reimbursement or non-competitive fixed-price type subcontracts having a total potential value in excess of $500,000 and (2) the cumulative value of all their service subcontracts under the proposed prime contract in excess of 10 percent of the prime contract's total potential value, provide as part of their proposals the information identified in (a) through (c) of this provision.

(End of provision)

1852.234–70 [Amended]

16. In section 1852.234–70, the section heading and clause title ''Phased Procurement Using Down-Selection Procedures'' is revised to read ''Phased Acquisition Using Down-Selection Procedures''.

17. In the introductory text to section 1852.234–70, the citation ''1834.005–170 (a)'' is revised to read ''1834.7004(a)'' and the word ''procurements'' is revised to read ''acquisitions''.

1852.234–71 [Amended]

18. In section 1852.234–71, the section heading and clause title ''Phased Procurement Using Progressive Competition Down-Selection Procedures'' is revised to read ''Phased Acquisition Using Progressive Competition Down-Selection Procedures''.

19. In the introductory text to section 1852.234–71, the citation ''1834.005–170 (b)'' is revised to read ''1834.7004(b)'' and the word ''procurements'' is revised to read ''acquisitions''.

1852.235–72 [Amended]

20. Section 1852.235–72 is revised to read as follow:

1852.235–72 Instructions for responding to NASA Research Announcements.

As prescribed in 1835.070(c), insert the following provision:

Instructions for Responding to NASA Research Announcements (January 1997)

(a) General.

(1) Proposals received in response to a NASA Research Announcement (NRA) will be used only for evaluation purposes. NASA does not allow a proposal, the contents of which are not available without restriction from another source, or any unique ideas submitted in response to an NRA to be used as the basis of a solicitation or in negotiation with other organizations, nor is a pre-award synopsis published for individual proposals.

(2) A solicited proposal that results in a NASA award becomes part of the record of that transaction and may be available to the public on specific request; however, information or material that NASA and the awardee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law, including the Freedom of Information Act.

(3) NRAs contain programmatic information and certain requirements which apply only to proposals prepared in response to that particular announcement. These instructions contain the general proposal preparation information which applies to responses to all NRAs.

(4) A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded in response to an NRA. NASA will determine the appropriate instrument. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement. Any resultant grants or cooperative agreements will be awarded and administered in accordance with the NASA Grant and Cooperative Agreement Handbook (NPG 5800.1).

(5) NASA does not have mandatory forms or formats for responses to NRAs; however, it is requested that proposals conform to the guidelines in these instructions. NASA may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

(6) To be considered for award, a submission must, at a minimum, present a specific project within the areas delineated by the NRA; contain sufficient technical and cost information to permit a meaningful evaluation; be signed by an official authorized to legally bind the submitting organization; not merely offer to perform standard services or to just provide computer facilities or services; and not significantly duplicate a more specific current or pending NASA solicitation.

(b) NRA-Specific Items. Several proposal submission items appear in the NRA itself: the unique NRA identifier; when to submit proposals; where to send proposals; number of copies required; and sources for more information. Items included in these instructions may be supplemented by the NRA.

(c) The following information is needed to permit consideration in an objective manner. NRAs will generally specify topics for which additional information or greater detail is desirable. Each proposal copy shall contain all submitted material, including a copy of the transmittal letter if it contains substantive information.

(1) Transmittal Letter or Prefatory Material.

(i) The legal name and address of the organization and specific division or campus identification if part of a larger organization;

(ii) A brief, scientifically valid project title intelligible to a scientifically literate reader and suitable for use in the public press;

(iii) Type of organization: e.g., profit, nonprofit, educational, small business, minority, women-owned, etc;

(iv) Name and telephone number of the principal investigator and business personnel who may be contacted during evaluation or negotiation;

(v) Identification of other organizations that are currently evaluating a proposal for the same efforts;

(vi) Identification of the NRA, by number and title, to which the proposal is responding;

(vii) Dollar amount requested, desired starting date, and duration of project;

(viii) Date of submission; and

(ix) Signature of a responsible official or authorized representative of the organization, or any other person authorized to legally bind the organization (unless the signature appears on the proposal itself).

(2) Restriction on Use and Disclosure of Proposal Information. Information contained in proposals is used for evaluation purposes only. Offerors or quoters should, in order to maximize protection of trade secrets or other information that is confidential or privileged, place the following notice on the title page of the proposal and specify the information subject to the notice by inserting an appropriate identification in the notice. In any event, information contained in proposals will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Notice—Restriction on Use and Disclosure of Proposal Information

The information (data) contained in *[insert page numbers or other identification*] of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract (or other agreement) is awarded on the basis of this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract (or other agreement). This restriction does not limit the Government's right to use or disclose this information (data0 if obtained from another source without restriction.

(3) Abstract. Include a concise (200–300 word if not otherwise specified in the NRA) abstract describing the objective and the method of approach.

(4) Project Description.

(i) The main body of the proposal shall be a detailed statement of the work to be undertaken and should include objectives and expected significance; relation to the present state of knowledge; and relation to previous work done on the project and to related work in progress elsewhere. The statement should outline the plan of work, including the broad design of experiments to be undertaken and a description of experimental methods and procedures. The project description should address the evaluation factors in these instructions and any specific factors in the NRA. Any substantial collaboration with individuals not referred to in the budget or use of consultants should be described. Subcontracting significant portions of a research project is discouraged.

(ii) When it is expected that the effort will require more than one year, the proposal should cover the complete project to the extent that it can be reasonably anticipated. Principal emphasis should be on the first year of work, and the description should distinguish clearly between the first year's work and work planned for subsequent years.

(5) Management Approach. For large or complex efforts involving interactions among numerous individuals or other organizations, plans for distribution of responsibilities and arrangements for ensuring a coordinated effort should be described.

(6) Personnel. The principal investigator is responsible for supervision of the work and participates in the conduct of the research regardless of whether or not compensated under the award. A short biographical sketch of the principal investigator, a list of principal publications and any exceptional qualifications should be included. Omit social security number and other personal items which do not merit consideration in evaluation of the proposal. Give similar biographical information on other senior professional personnel who will be directly associated with the project. Give the names and titles of any other scientists and technical personnel associated substantially with the project in an advisory capacity. Universities should list the approximate number of students or other assistants, together with information as to their level of academic attainment. Any special industry-university cooperative arrangements should be described.

(7) Facilities and Equipment.

(i) Describe available facilities and major items of equipment especially adapted or suited to the proposed project, and any additional major equipment that will be required. Identify any Government-owned facilities, industrial plant equipment, or special tooling that are proposed for use. Include evidence of its availability and the cognizant Government points of contact.

(ii) Before requesting a major item of capital equipment, the proposer should determine if sharing or loan of equipment already within the organization is a feasible alternative. Where such arrangements cannot be made, the proposal should so state. The need for items that typically can be used for

research and non-research purposes should be explained.

(8) Proposed Costs

(i) Proposals should contain cost and technical parts in one volume: do not use separate ''confidential'' salary pages. As applicable, include separate cost estimates for salaries and wages; fringe benefits; equipment; expendable materials and supplies; services; domestic and foreign travel; ADP expenses; publication or page charges; consultants; subcontracts; other miscellaneous identifiable direct costs; and indirect costs. List salaries and wages in appropriate organizational categories (e.g., principal investigator, other scientific and engineering professionals, graduate students, research assistants, and technicians and other non-professional personnel). Estimate all staffing data in terms of staff-months or fractions of full-time.

(ii) Explanatory notes should accompany the cost proposal to provide identification and estimated cost of major capital equipment items to be acquired; purpose and estimated number and lengths of trips planned; basis for indirect cost computation (including date of most recent negotiation and cognizant agency); and clarification of other items in the cost proposal that are not self-evident. List estimated expenses as yearly requirements by major work phases.

(iii) Allowable costs are governed by FAR Part 31 and the NASA FAR Supplement Part 1831 (and OMB Circulars A–21 for educational institutions and A–122 for nonprofit organizations).

(9) Security. Proposals should not contain security classified material. If the research requires access to or may generate security classified information, the submitter will be required to comply with Government security regulations.

(10) Current Support. For other current projects being conducted by the principal investigator, provide title of project, sponsoring agency, and ending date.

(11) Special Matters.

(i) Include any required statements of environmental impact of the research, human subject or animal care provisions, conflict of interest, or on such other topics as may be required by the nature of the effort and current statutes, executive orders, or other current Government-wide guidelines.

(ii) Proposers should include a brief description of the organization, its facilities, and previous work experience in the field of the proposal. Identify the cognizant Government audit agency, inspection agency, and administrative contracting officer, when applicable.

(d) Renewal Proposals.

(1) Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. A renewal proposal should not repeat all of the information that was in the original proposal. The renewal proposal should refer to its predecessor, update the parts that are no longer current, and indicate what elements of the research are expected to be covered during the period for which support is desired. A description of any significant findings since the most recent progress report should be included. The renewal proposal should treat, in reasonable detail, the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

(2) NASA may renew an effort either through amendment of an existing contract or by a new award.

(e) Length. Unless otherwise specified in the NRA, effort should be made to keep proposals as brief as possible, concentrating on substantive material. Few proposals need exceed 15–20 pages. Necessary detailed information, such as reprints, should be included as attachments. A complete set of attachments is necessary for each copy of the proposal. As proposals are not returned, avoid use of ''one-of-a-kind'' attachments.

(f) Joint Proposals.

(1) Where multiple organizations are involved, the proposal may be submitted by only one of them. It should clearly describe the role to be played by the other organizations and indicate the legal and managerial arrangements contemplated. In other instances, simultaneous submission of related proposals from each organization might be appropriate, in which case parallel awards would be made.

(2) Where a project of a cooperative nature with NASA is contemplated, describe the contributions expected from any participating NASA investigator and agency facilities or equipment which may be required. The proposal must be confined only to that which the proposing organization can commit itself. ''Joint'' proposals which specify the internal arrangements NASA will actually make are not acceptable as a means of establishing an agency commitment.

(g) Late Proposals. A proposal or modification received after the date or dates specified in an NRA may be considered if doing so is in the best interests of the Government.

(h) Withdrawal. Proposals may be withdrawn by the proposer at any time before award. Offerors are requested to notify NASA if the proposal is funded by another organization or of other changed circumstances which dictate termination of evaluation.

(i) Evaluation Factors

(1) Unless otherwise specified in the NRA, the principal elements (of approximately equal weight) considered in evaluating a proposal are its relevance to NASA's objectives, intrinsic merit, and cost.

(2) Evaluation of a proposal's relevance to NASA's objectives includes the consideration of the potential contribution of the effort to NASA's mission.

(3) Evaluation of its intrinsic merit includes the consideration of the following factors of equal importance:

(i) Overall scientific or technical merit of the proposal or unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(ii) Offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(iii) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical in achieving the proposal objectives.

(iv) Overall standing among similar proposals and/or evaluation against the state-of-the-art.

(4) Evaluation of the cost of a proposed effort may include the realism and reasonableness of the proposed cost and available funds.

(j) Evaluation Techniques. Selection decisions will be made following peer and/or scientific review of the proposals. Several evaluation techniques are regularly used within NASA. In all cases proposals are subject to scientific review by discipline specialists in the area of the proposal. Some proposals are reviewed entirely in-house, others are evaluated by a combination of in-house and selected external reviewers, while yet others are subject to the full external peer review technique (with due regard for conflict-of-interest and protection of proposal information), such as by mail or through assembled panels. The final decisions are made by a NASA selecting official. A proposal which is scientifically and programmatically meritorious, but not selected for award during its initial review, may be included in subsequent reviews unless the proposer requests otherwise.

(k) Selection for Award.

(1) When a proposal is not selected for award, the proposer will be notified. NASA will explain generally why the proposal was not selected. Proposers desiring additional information may contact the selecting official who will arrange a debriefing.

(2) When a proposal is selected for award, negotiation and award will be handled by the procurement office in the funding installation. The proposal is used as the basis for negotiation. The contracting officer may request certain business data and may forward a model award instrument and other information pertinent to negotiation.

(l) Cancellation of NRA. NASA reserves the right to make no awards under this NRA and to cancel this NRA. NASA assumes no liability for canceling the NRA or for anyone's failure to receive actual notice of cancellation.

1852.236–71 [Amended]

21. In the introductory text to section 1852.236–71, the citation ''1836.370(a)'' is revised to read ''1836.570(a)''.

1852.236–72 [Amended]

22. In the introductory text to section 1852.236–72, the citation ''1836.370(b)'' is revised to read ''1836.570(b)''.

1852.236–73 [Amended]

23. In the introductory text to section 1852.236–73, the citation ''1836.570–1'' is revised to read ''1836.570(c)''.

1852.236–74 [Amended]

24. In the introductory text to section 1852.236–74, the citation ''1836.570–2'' is revised to read ''1836.570(d)''.

1852.237–70 [Amended]

25. In the introductory text to section 1852.237–70, the citation ''1837.110–70'' is revised to read ''1837.110–70(a)''.

1852.237–71, 1852.237–72 [Amended]

26. Sections 1852.237–71 and 1852.237–72 are revised to read as follows:

1852.237–71 Pension Portability.

As prescribed at 1837.110–70(b), insert the following clause:

Pension Portability, January 1997

(a) In order for pension costs attributable to employees assigned to this contract to be allowable costs under this contract, the plans covering such employees must:

(1) Comply with all applicable Government laws and regulations;

(2) Be a defined contribution plan, or a multiparty defined benefit plan operated under a collective bargaining agreement. In either case, the plan must be portable, i.e., the plan follows the employee, not the employer;

(3) Provide for 100 percent employee vesting at the earlier of one year of continuous employee service or contract termination; and

(4) Not be modified, terminated, or a new plan adopted without the prior written approval of the cognizant NASA Contracting Officer.

(b) The Contractor shall include paragraph (a) of this clause in subcontracts for continuing services under a service contract if:

(1) The prime contract requires pension portability;

(2) The subcontracted labor dollars (excluding any burdens or profit/fee) exceed $2,500,000 and ten percent of the total prime contract labor dollars (excluding any burdens or profit/fee); and

(3) Either of the following conditions exists:

(i) There is a continuing need for the same or similar subcontract services for a minimum of five years (inclusive of options), and if the subcontractor changes, a high percentage of the predecessor subcontractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor subcontract were covered by a portable pension plan, a follow-on subcontract or a subcontract consolidating existing services is awarded, and the total subcontract period covered by the plan covers a minimum of five years (including both the predecessor and successor subcontracts).

(End of clause)

1852.237–72 Identification of Uncompensated Overtime.

As prescribed in 1837.110–70(c), insert the following provision:

Identification of Uncompensated Overtime, January 1997

The use of uncompensated overtime is neither encouraged nor discouraged. When the proposed uncompensated overtime is consistent with an officer's written policies and practices, NASA will consider it in proposal evaluation, including the evaluation of cost and of professional compensation.

(a) Definitions. As used in this provision:

''Uncompensated overtime'' means the hours worked in excess of an average of 40 hours per week, by direct charge employees who are exempt from the Fair Labor Standards Act (FLSA) without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

''Effective hourly rate'' is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work seek basis at $20.00 per hour would be converted to an effective hourly rate of $17.78 per hour [($20.00×40) divided by 45=$17.78].

(b) For any hours proposed against which an effective hourly rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, at the same level of detail as compensated hours, and the effective hourly rate, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct. The proposal shall include the rationale and methodology used to estimate the proposed amount of uncompensated overtime.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) The Offeror shall include with its proposal a copy of its policy addressing uncompensated overtime, a description of the timekeeping and accounting systems used to record all hours worked by FLSA-exempt employees, and the historical basis for the uncompensated overtime hours proposed.

(End of provision)

1852.239–70 [Amended]

27. In the introductory text to section 1852.239–70, the citation ''1839.7008(a)'' is revised to read ''1836.106(a)(1)''.

28. In the introductory text to Alternate I of section 1852.239–70, the citation ''1839.7008(b)'' is revised to read ''1839.106–70(a)(2)''.

1852.241–70 [Amended]

29. In the introductory text to section 1852.241–70, the citation ''1841.501(b)'' is revised to read ''1841.501–70''.

PART 1870—NASA SUPPLEMENTARY REGULATIONS

Subpart 1870.2—[Removed]

30. Subpart 1870.2 is removed.

Subpart 1870.5—[Removed]

31. Subpart 1870.5 is removed.

PART 1871—MIDDRANGE PROCUREMENT PROCEDURES

1871.406–1 [Amended]

32. In section 1871.401–6, paragraph (a)(2) is revised and a new paragraph (a)(3) is added to read as follows:

1871.401–6 Commercial Items.

(a) * * *

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

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

PART 1872—[ADDED]

33. Part 1872 is added to read as follows:

PART 1872—ACQUISITIONS OF INVESTIGATIONS

Sec.
1872.000 Scope of part.

Subpart 1872.1—The Investigation Acquisition System

1872.101 General.
1872.102 Key features of the system.
1872.103 Management responsibilities.

Subpart 1872.2—Applicability of the Process

1872.201 General.
1872.202 Criteria for determining applicability.
1872.203 Applicable programs and activities.
1872.204 Approval.

Subpart 1872.3—The Announcement of Opportunity

1872.301 General.
1872.302 Preparatory effort.
1872.303 Responsibilities.
1872.304 Proposal opportunity period.
1872.305 Guidelines for announcement of opportunity.
1872.306 Announcement of opportunity soliciting foreign participation.
1872.307 Guidelines for proposal preparation.

Subpart 1872.4—Evaluation of Proposals

1872.401 General.
1872.402 Criteria for evaluation.
1872.403 Methods of evaluation.
1872.403–1 Advisory subcommittee evaluation process.
1872.403–2 Contractor evaluation process.
1872.403–3 Government evaluation process.
1872.404 Engineering, integration, and management evaluation.
1872.405 Program office evaluation.
1872.406 Steering committee review.
1872.407 Principles to apply.

Subpart 1872.5—The Selection Process

1872.501 General.
1872.502 Decisions to be made.
1872.503 The selection statement.
1872.504 Notification of proposers.
1872.505 Debriefing.

Subpart 1872.6—Payload Formulation

1872.601 Payload formulation.

Subpart 1872.7—Acquisition and Other Considerations

1872.701 Early involvement essential.
1872.702 Negotiation, discussions and contract award.
1872.703 Applications of the Federal Acquisition Regulation (FAR) and the NASA FAR Supplement.
1872.704 Other administrative and functional requirements.
1872.705 Format of announcement of opportunity.
1872.705–1 Appendix A: General instructions and provisions.
1872.705–2 Appendix B: Guidelines for proposal preparation.
1872.705–3 Appendix C: Glossary of terms and abbreviations associated with investigations.

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

1872.000 Scope of part.

This part prescribes policies and procedures for the acquisition of investigations.

Subpart 1872.1—The Investigation Acquisition System

1872.101 General.

The investigation acquisition system encourages the participation of investigators and the selection of investigations which contribute most effectively to the advancement of NASA's scientific and technological objectives. It is a system separate from the acquisition process, but requiring the same management and discipline to assure compliance with statutory requirements and considerations of equity.

1872.102 Key features of the system.

(a)(1) Use of the system commences with a Program Associate Administrator's determination that the investigation acquisition process is appropriate for a program. An Announcement of Opportunity (AO) is disseminated to the interested scientific and technical communities. This solicitation does not specify the investigations to be proposed but solicits investigative ideas which contribute to broad objectives. In order to determine which of the proposals should be selected, a formal competitive evaluation process is utilized. The evaluation for merit is normally made by experts in the fields represented by the proposals. Care should be taken to avoid conflicts of interest. These evaluators may be from NASA, other Government agencies, universities, or the commercial sector. Along with or subsequent to the evaluation for merit, the other factors of the proposals, such as engineering, cost, and integration aspects, are reviewed by specialists in those areas. The evaluation conclusions as well as considerations of budget and other factors are used to formulate a complement of recommended investigations. A steering committee serving as staff to the Program Associate Administrator (Program AA), or designee when source selection authority is delegated, reviews the proposed payload or program of investigation, the iterative process, and the selection recommendations. The steering committee serves as a forum where different interests, such as flight program, discipline management, and administration, can be weighed.

(2) The Program AA, or designee, selects the proposals that will participate in the program. Once selected, an investigator is assigned appropriate responsibilities relating to the investigation through a contract with the institution. For foreign investigators, these responsibilities will usually be outlined in an agreement between NASA and the sponsoring governmental agency in the investigator's country.

(b) The AO process provides a disciplined approach to investigation acquisition. The following major steps must be followed in each case:

(1) The AO shall be signed by the Program AA and shall be widely distributed to the scientific, technological, and applications user communities, as appropriate.

(2) An evaluation team shall be formed including recognized peers of the investigators.

(3) A project office will be assigned to assess the engineering, cost, integration, and management aspects of the proposals.

(4) A program office will be responsible to formulate a complement of investigations consistent with the objectives stated in the AO, cost, and schedule constraints.

(5) A steering committee appointed by the appropriate Program AA shall review the proposed investigations for relevance and merit, will assure compliance with the system as described in this Handbook, and make selection recommendations.

(6) The Source Selection Official shall be the Program AA or the Program AA's designee.

(c) Payloads will be formulated consisting of investigations selected through the AO process and/or other authorized methods.

1872.103 Management responsibilities.

(a) Program AAs are responsible for overseeing the process and for making key decisions essential to the process including:

(1) Determination to use the investigation acquisition system.

(2) Appointment of the steering committee members.

(3) Designation of a staff to assure uniformity in the issuance of the AO and conformity with the required procedures in the evaluation and selection.

(4) Reuse, to the maximum extent practicable, of space hardware and support equipment.

(5) Determination to use advisory subcommittees, contractor, or full-time Government employees only in the evaluation process.

(6) Issuance of the AO.

(7) Selection of investigations and investigators, determination of need of a definition phase, determination of the role of the investigator with regard to providing essential investigation hardware and services, and determination of the need for payload specialists.

(8) Assure consideration is given to minorities in the establishment of peer groups, distribution of the AO and in the selection of investigations.

(9) Provide a framework for cooperative foreign participation in Space Shuttle, Spacelab, and Space Station missions.

(b) The Program AA should call upon any required experts throughout the process.

Subpart 1872.2—Applicability of the Process

1872.201 General.

The system used for acquisition of investigations is separate from the agency procedures for acquisition of known requirements. A decision to use this special acquisition process will be based on a determination that it is the most suitable to meet program needs. The decision-making official will consider the criteria for use of the system. The project plan or other documentation should discuss the proposed mode of investigations selection.

1872.202 Criteria for determining applicability.

(a) The decision to use the investigations acquisition process as an alternative to the normal planning and acquisition process can only be made after consideration of the conditions which require its use. All of the following conditions should exist before deciding that the system is applicable:

(1) NASA has a general objective which can be furthered through novel experimental approaches. To develop such approaches, NASA wishes to draw upon the broadest possible reservoir of ideas.

(2) Choices must be made among competing ideas in expanding knowledge.

(3) Individual participation of an investigator is essential to exploitation of the opportunity.

(b) The investigations acquisition process shall not be used when any of the following characteristics are present:

(1) The requiring office can define a requirement sufficiently to allow for normal acquisition.

(2) The program is extremely complex, requiring specialized integration, coordination, or other special handling, or extending over a lengthy period wherein individual participation is not essential.

1872.203 Applicable programs and activities.

The investigation acquisition process is most suitable for investigations aimed at exploration requiring several unique sensors or instruments, but it has been used successfully in the following types of activities:

(a) Exploration and space research flights. (1) Examples include Space Transportation System (STS) flights with attached payloads, generally Spacelab payloads; and free-flying spacecraft, such as Explorers, Pioneers, Space Telescope, Landsats, and Long Duration Exposure Facilities.

(2) Types of opportunity include:

(i) Participation as a Principal Investigator (PI) responsible for conceiving and conducting a space investigation (This may involve a major piece of instrumentation. In the case of a ''facility'' or ''multiuser'' payload, each PI's responsibilities would ordinarily involve a relatively minor portion of the total instrument.);

(ii) An opportunity to serve on a PI's team as a member or Co-Investigator;

(iii) An opportunity that generally involves the use of data from another investigator's instrument as a guest investigator or guest observer (Guest investigators usually participate after the primary objectives have been satisfied for the investigations involved.); and

(iv) A team formed from selected investigators to assist in defining planned mission objectives and/or to determine, in a general manner, the most meaningful instruments to accomplish the mission objectives.

(3) The investigation acquisition process may be applicable to all types of opportunities. The supposition common in these opportunities is that the best ideas and approaches are likely to result from the broadest possible involvement of the scientific, technological or applications user communities.

(b) Minor missions. (1) Examples include research aircraft, sounding rockets, balloons, and minor missions that are generally of short duration, small in size, often single purpose, and subject to repetition. Many investigations are follow-on to past-flight investigations.

(2) Types of opportunity include:

(i) PIs responsible for investigation; and

(ii) Data use or analysis.

(3) Opportunities for participation on minor missions are generally suitable for normal acquisition procedures. The use of an announcement describing the general nature and schedule of flights may be appropriate when considered necessary to broaden participation by requesting investigator-initiated research proposals. Normal acquisition procedures shall be used for follow-on repeat flights. Although NASA seeks unique, innovative ideas for these missions, the prospect of reflight and the latitude in determining number and schedule of flights argue against the need for the use of the investigations acquisition process to force dissimilar proposals into an annual or periodic competitive structure. On the other hand, there are some minor missions addressed to specific limited opportunities; for example, a solar eclipse. When such limitations indicate that the special competitive structure is needed, it should be authorized.

(c) Operational and operational prototype spacecraft. (1) Examples include spacecraft built for NASA and other agencys' missions.

(2) The user agency can be expected to specify performance parameters. Payload definition will be the responsibility of the user agency and NASA. Specifications sufficient for normal acquisition procedures can be produced. Use of data from the mission is the responsibility of the user agency. Thus, the investigation acquisition process is not required.

(d) Supporting Research and Technology (SR&T). (1) Examples include studies, minor developments, instrument conceptualization, ground-based observations, laboratory and theoretical supporting research, and data reduction and analysis which is unconstrained by a specific opportunity.

(2) Programs in these areas tend to go forward on a continuing basis, rather than exploiting unique opportunities. Normal acquisition procedures should be used. A general announcement of area of interest could be made when greater participation is deemed advisable.

1872.204 Approval.

The Program AA is responsible for determining whether or not to use the investigations acquisition process. Normally on major projects, or when a project plan is required, use of the investigation acquisition system will be justified and recommended in the project planning documentation and will be coordinated with staff offices and discussed in the planning presentation to the Deputy Administrator or designee.

Subpart 1872.3—The Announcement of Opportunity

1872.301 General.

An announcement of opportunity (AO) is characterized by its generality. However, it is essential that the AO contains sufficient data in order to obtain meaningful proposals. To a considerable extent, the detail and depth of the AO will depend on the objective. The purpose is to get adequate information to assess the relevance, merit, cost, and management requirements without overburdening the proposer.

1872.302 Preparatory effort.

(a) Headquarters offices and the responsible project installation must consult prior to release of the AO.

(b) The program office shall:

(1) Synopsize the AO in the Commerce Business Daily prior to the time of release;

(2) Determine if there is instrumentation or support equipment available which may be appropriate to the AO with all necessary background data considered essential for use by a proposer;

(3) Determine mailing lists, including the mailing list maintained by the International Affairs Division, Office of External Relations, for broad dissemination of the AO; and

(4) Assure mandatory provisions are contained in the AO.

(c) Other methods of dissemination of the AO may also be used, such as the use of press releases, etc. When possible, the AO should be widely publicized through publications of appropriate professional societies; however, NASA policy does not allow payment for the placement of advertisements.

1872.303 Responsibilities.

(a) The program office originator is responsible for the content of the AO and coordination with concerned Headquarters offices and field installations. All personnel involved in the evaluation of proposals are responsible for familiarizing themselves and complying with this part and other applicable regulations. To this end, they are expected to seek the advice and guidance of appropriate Headquarters program and staff offices, and Project Installation management.

(b) The Program Office is also responsible for coordinating the AO with the International Affairs, Educational Affairs, Management Support Divisions, Office of External Relations, Office of General Counsel, and Office of Acquisition prior to issuance (see NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs).

(c) Concurrence of the Office of Acquisition is required before issuance of an AO.

1872.304 Proposal opportunity period.

(a) The AO must accommodate to the maximum extent practicable opportunities afforded by the Shuttle/Spacelab flights. The following methods may be used to enable an AO to be open for an extended period of time and/or to cover a series or range of flight possibilities or disciplines:

(1) The AO may be issued establishing a number of proposal submission dates. Normally, no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposals.

(2) The AO may be issued establishing a single proposal submission date. However, the AO could provide that NASA amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired within the AO objectives.

(3) The AO may provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals, the time remaining prior to the flight opportunity(s) contemplated by the AO, and payload funding and availability.

(b) Generally, a core payload of investigations would be selected from the initial submission of proposals under the above methods of open-ended AOs. These selections could be final or tentative recognizing the need for further definition. Proposals received by subsequent submission dates would be considered in the scope of the original AO but would be subject to the opportunities and resources remaining available or the progress being made by prior selected investigations.

(c) Any proposal, whether received on the initial submission or subsequent submission, requires notification to the investigator and the investigator's institution of the proposal disposition. Some of the proposals will be rejected completely and the investigators immediately notified. The remaining unselected proposals may, if agreeable with the proposers, be held for later consideration and funding and the investigator so notified. However, if an investigator's proposal is considered at a later date, the investigator must be given an opportunity to validate the proposal with the investigator's institution and for updating the cost and other data contained in the original submission prior to a final selection. In summary, NASA may retain proposals, receiving Category I, II, or III classifications (see 1872.403–1(e)), for possible later sponsorship until no longer feasible to consider the proposal. When this final stage is reached, the investigator must be promptly notified. Proposing investigators not desiring their proposals be held for later consideration should be given the opportunity to so indicate in their original submissions.

1872.305 Guidelines for Announcement of Opportunity.

(a) The AO should be tailored to the particular needs of the contemplated investigations and be complete in itself. Each AO will identify the originating program office and be numbered consecutively by calendar year, e.g., OA–1–95, OA–2–95; OLMSA–1–95; OSS–1–95; etc. The required format and detailed instructions regarding the contents of the AO are contained in 1872.705.

(b) The General Instructions and Provisions, Appendix A (see 1872.705–1) are necessary to accommodate the unique aspects of the AO process. Therefore, they must be appended to each AO.

(c) At the time of issuance, copies of the AO must be furnished to Headquarters, Office of Acquisition (Code HS) and Office of General Counsel (Code GK).

(d) Proposers should be informed of significant departures from scheduled dates for activities related in the AO.

1872.306 Announcement of Opportunity soliciting foreign participation.

Proposals for participation by individuals outside the U.S. shall be submitted in the same format (excluding cost plans) as U.S. proposals, typewritten in English, and reviewed and endorsed by the appropriate foreign governmental agency. If letters of ''Notice of Intent'' are required, the AO should indicate that they be sent to Headquarters, Office of External Relations, International Relations Division (Code IR). Should a foreign proposal be selected, NASA will arrange with the sponsoring foreign agency for the proposed participation on a no-exchange-of-funds basis, in which NASA and the sponsoring agency will each bear the cost of discharging its respective responsibilities. Note that additional guidelines applicable to foreign proposers are contained in the Management Plan Section of Appendix B (see 1872.705–2) and must be included in any Guidelines for Proposal Preparation or otherwise furnished to foreign proposers.

1872.307 Guidelines for proposal preparation.

While not all of the guidelines outlined in Appendix B will be applicable in response to every AO, the investigator should be informed of the relevant information required. The proposal may be submitted on a form supplied by the Program Office. However, the proposal should be submitted in at least two sections:

(a) Investigation and Technical Section; and (b) Management and Cost Section as described in Appendix B.

Subpart 1872.4—Evaluation of Proposals

1872.401 General.

(a) The evaluation process considers the aspects of each proposal by the following progressive sorting:

(1) A review resulting in a categorization is performed by using one of the methods or combination of the methods outlined in 1872.403. The purpose of this initial review is to determine the scientific and/or technological merit of the proposals in the context of the AO objectives.

(2) Those proposals which are considered to have the greatest scientific or technological merit are then reviewed in detail for the engineering, management, and cost aspects, usually by the project office at the installation responsible for the project.

(3) Final reviews are performed by the program office and the steering committee and are aimed at developing a group of investigations which represent an integrated payload or a well-balanced program of investigation which has the best possibility for meeting the AO's objectives within programmatic constraints.

(b) The importance of considering the interrelationship of the several aspects of the proposals to be reviewed in the process and the need for carefully planning their treatment should not be overlooked. An evaluation plan should be developed before issuance of the AO. It should cover the recommended staffing for any subcommittee or contractor support, review guidelines as well as the procedural flow and schedule of the evaluation. While not mandatory, such a plan should be considered for each AO. A fuller discussion of the evaluation and selection process is included in the following sections of this subpart.

1872.402 Criteria for evaluation.

(a) Each AO must indicate those criteria which the evaluators will apply in evaluating a proposal. The relative importance of each criterion must also be stated. This information will allow investigators to make informed judgments in formulating proposals that best meet the stated objectives.

(b) Following is a list of general evaluation criteria appropriate for inclusion in most AOs:

(1) The scientific, applications, and/or technological merit of the investigation.

(2) The relevance of the proposed investigation to the AO's stated scientific, applications, and/or technological objectives.

(3) The competence and experience of the investigator and any investigative team.

(4) Adequacy of whatever apparatus may be proposed with particular regard to its ability to supply the data needed for the investigation.

(5) The reputation and interest of the investigator's institution, as measured by the willingness of the institution to provide the support necessary to ensure that the investigation can be completed satisfactorily.

(6) Cost and management aspects will be considered in all selections.

(7) Other or additional criteria may be used, but the evaluation criteria must be germane to the accomplishment of the stated objectives.

(c) Once the AO is issued, it is essential that the evaluation criteria be applied in a uniform manner. If it becomes apparent, before the date set for receipt of proposals, that the criteria or their relative importance should be changed, the AO will be amended, and all known recipients will be informed of the change and given an adequate opportunity to consider it in submission of their proposals. Evaluation criteria and/or their relative importance will not be changed after the date set for receipt of proposals.

1872.403 Methods of evaluation.

Alternative methods are available to initiate the evaluation of proposals received in response to an AO. These are referred to as the Advisory Subcommittee Evaluation Process, the Contractor Evaluation Process, and the Government Evaluation Process. In all processes, a subcommittee of the appropriate Program Office Steering Committee will be formed to categorize the proposals. Following categorization, those proposals still in consideration will be processed to the selection official.

1872.403–1 Advisory subcommittee evaluation process.

(a) Evaluation of scientific and/or technological merit of proposed investigations is the responsibility of an advisory subcommittee of the Steering Committee. The subcommittee constitutes a peer group qualified to judge the scientific and technological aspects of all investigation proposals. One or more subcommittees may be established depending on the breadth of the technical or scientific disciplines inherent in the AO's objectives. Each subcommittee represents a discipline or grouping of closely related disciplines. To maximize the quality of the subcommittee evaluation and categorization, the following conditions of selection and appointment should be considered.

(1) The subcommittee normally should be established on an ad hoc basis.

(2) Qualifications and acknowledgment of the professional abilities of the subcommittee members are of primary importance. Institutional affiliations are not sufficient qualifications.

(3) The executive secretary of the subcommittee must be a full-time NASA employee.

(4) Subcommittee members should normally be appointed as early as possible and prior to receipt of proposals.

(5) Care must be taken to avoid conflicts of interest. These include financial interests, institutional affiliations, professional biases and associations, as well as familiar relationships. Conflicts could further occur as a result of imbalance between Government and non-Government appointees or membership from institutions representing a singular school of thought in discipline areas involving competitive theories in approach to an investigation.

(6) The subcommittee should convene as a group in closed sessions for proposal evaluation to protect the proposer's proprietary ideas and to allow frank discussion of the proposer's qualifications and the merit of the proposer's ideas. Lead review responsibility for each proposal may be assigned to members most qualified in the involved discipline. It is important that each proposal be considered by the entire subcommittee.

(b) It may not be possible to select a subcommittee fully satisfying all of the conditions described in paragraph (a) of this section. It is the responsibility of the nominating and appointing officials to make trade-offs, where necessary, among the criteria in paragraph (a) of this section. This latitude permits flexibility in making decisions in accord with circumstances of each application. In so doing, however, it is emphasized that recognized expertise in evaluating dissimilar proposals is essential to the continued workability of the investigation acquisition process.

(c) Candidate subcommittee members should be nominated by the office having responsibility for the evaluation. Nominations should be approved in accordance with NMI 1150.2, ''Establishment, Operation, and Duration of NASA Advisory Committees.'' The notification of appointment should specify the duration of assignment on the subcommittee, provisions concerning conflicts of interest, and arrangements regarding honoraria, per diem, and travel when actually employed.

(d) It is important that members of the subcommittee be formally instructed as to their responsibilities with respect to the investigation acquisition process, even where several or all of the members have served previously. This briefing of subcommittee members should include:

(1) Instruction of subcommittee members on agency policies and procedures pertinent to acquisition of investigations.

(2) Review of the program goals, AO objectives, and evaluation criteria, including relative importance, which provide the basis for evaluation.

(3) Instruction on the use of preliminary proposal evaluation data furnished by the Installation Project Office. The subcommittee should examine these data to gain a better understanding of the proposed investigations, any associated problems, and to consider cost in relation to the value of the investigations' objectives.

(4) Definition of responsibility of the subcommittee for evaluation and categorization with respect to scientific and/or technical merit in accordance with the evaluation criteria.

(5) Instruction for documentation of deliberations and categorizations of the subcommittee.

(6) Inform the chairperson of the subcommittee and all members that they should familiarize themselves with the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Supplemental Standards of Ethical Conduct for employees of the National Aeronautics and Space Administration, 5 CFR part 6901, regarding conflicts of interest. Members should inform the appointing authority if their participation presents a real or apparent conflict of interest situation. In addition, all participants should inform the selection official in the event they are subjected to pressure or improper contacts.

(7) Inform members that prior to the selection and announcement of the successful investigators and investigations, subcommittee members and NASA personnel shall not reveal any information concerning the evaluation to anyone who is not also participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with such proceedings. Also, inform members that subsequent to selection of an investigation and announcement of negotiations with the investigator's institution, information concerning the proceedings of the subcommittee and data developed by the subcommittee will be made available to others within NASA only when the requestor demonstrates a need to know for a NASA purpose. Such information will be made available to persons outside NASA including other Government agencies, only when such disclosure is concurred in by the Office of General Counsel. In this connection, reference is made to 18 U.S.C. 1905 which provides criminal sanctions if any officer or employee (including special employees) of the United States discloses or divulges certain kinds of business confidential and trade secret information unless authorized by law.

(e) The product of an advisory subcommittee is the classification of proposals into four categories. The categories are:

(1) Category I—Well conceived and scientifically and technically sound investigations pertinent to the goals of the program and the AO's objectives and offered by a competent investigator from an institution capable of supplying the necessary support to ensure that any essential flight hardware or other support can be delivered on time and that data can be properly reduced, analyzed, interpreted, and published in a reasonable time. Investigations in Category I are recommended for acceptance and normally will be displaced only by other Category I investigations.

(2) Category II—Well conceived and scientifically or technically sound investigations which are recommended for acceptance, but at a lower priority than Category I.

(3) Category III—Scientifically and technically sound investigations which require further development. Category III investigations may be funded for development and may be reconsidered at a later time for the same or other opportunities.

(4) Category IV—Proposed investigations which are recommended for rejection for the particular opportunity under consideration, whatever the reason.

(f) A record of the deliberations of the subcommittee shall be prepared by the assigned executive secretary and shall be signed by the Chairperson. The minutes shall contain the categorizations with basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

1872.403–2 Contractor evaluation process.

(a) The use of the contractor method for obtaining support for evaluation purposes of proposals received in response to an AO requires the approval of the Program AA. Prior to the use of this method, discussion should be held with the Office of Acquisition.

(b) It is NASA policy to avoid situations in the acquisition process where, by virtue of the work or services performed for NASA, or as a result of data acquired from NASA or from other entities, a particular company:

(1) Is given an unfair competitive advantage over other companies with respect to future NASA business;

(2) Is placed in position to affect Government actions under circumstances in which there is potential that the company's judgment may be biased; or

(3) Otherwise finds that a conflict exists between the performance of work or services for the Government in an impartial manner and the company's own self-interest.

(c) To reduce the possibility of an organizational conflict of interest problem arising, the following minimum restrictions will be incorporated into the contract:

(1) No employee of the contractor will be permitted to propose in response to the AO;

(2) The ''Limitation on Future Contracting'' clause contained in 1852.209–71 and the conditions set forth in 1815.413–2 Alternate II will be included in all such contracts; and

(3) Unless authorized by the NASA contracting officer, the contractor shall not contact the originator of any proposal concerning its contents.

(d) The scope of work for the selected contractor will provide for an identification of strengths and weaknesses and a summary of the proposals. The contractor will not make selections nor recommend investigations.

(e) The steps to be taken in establishing evaluation panels and the responsibilities of NASA and the contractor in relation to the panels will be as follows:

(1) The contractor will be required to establish and provide support to panels of experts for review of proposals to evaluate their scientific and technical merit;

(2) These panels will be composed of scientists and specialists qualified to evaluate the proposals;

(3) The agency may provide to the contractor lists of scientist(s) and specialist(s) in the various disciplines it believes are qualified to serve on the panels;

(4) The contractor will report each panel's membership to NASA for approval; and

(5) The contractor must make all the necessary arrangements with the panel members.

(f) The evaluation support by the contractor's panels of experts will be accomplished as follows:

(1) The panels will review the scientific and technical merit of the proposals in accordance with the evaluation criteria in the AO and will record their strengths and weaknesses;

(2) The contractor will make records of each panel's deliberations which will form the basis for a report summarizing the results of the evaluations. Upon

request, the contractor shall provide all such records to NASA;

(3) The chairperson of each panel shall certify that the evaluation report correctly represents the findings of the review panel; and

(4) A final report will be submitted as provided in the contract.

(g) A subcommittee of the Program Office Steering Committee will be established on an ad hoc basis. Utilizing furnished data, the subcommittee will classify the proposals into the four categories enumerated in 1872.403–1(e)(1), Advisory Subcommittee Evaluation Process. A record of the deliberations of the subcommittee should be prepared by an assigned executive secretary and signed by the chairperson. The minutes should contain the categorizations with the basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

1872.403–3 Government evaluation process.

(a) The Program AA may, in accordance with NMI 1150.2, appoint one or more full-time Government employees as subcommittee members of the Program Office Steering Committee to evaluate and categorize the proposals.

(b) Each subcommittee member should be qualified and competent to evaluate the proposals in accordance with the AO evaluation criteria. It is important that a subcommittee's evaluation not be influenced by others either within or outside of NASA.

(c) The subcommittee members will not contact the proposers for additional information.

(d) The subcommittee members will classify the proposals in accordance with the four categories indicated in 1872.403–1(e)(1). Each categorization will be supported by an appropriate rationale including a narrative of each proposal's strengths and weaknesses.

1872.404 Engineering, integration, and management evaluation.

(a) The subcommittee responsible for categorization of each proposal in terms of its scientific applications, or technical merit should receive information on probable cost, technical status, developmental risk, integration and safety problems, and management arrangements in time for their deliberations.

(b) This information should be provided at the discretion of the Headquarters Program Office by the Project Office at the installation. This information can be in general terms and should reflect what insights the Project Office can provide without requesting additional details from the proposers. This limited Project Office review will not normally give the subcommittees information of significant precision. The purpose is to give the subcommittee sufficient information so it can review the proposals in conjunction with available cost, integration, and management considerations to gain an impression of each investigator's understanding of the problems of the experiment and to permit gross trade-offs of cost versus value of the investigation objective.

(c) Following categorization, the Project Office shall evaluate proposals in contention, in depth, including a thorough review of each proposal's engineering, integration, management, and cost aspects. This review should be accomplished by qualified engineering, cost, and business analysts at the project center.

(d) In assessing proposed costs, the evaluation must consider:

(1) The investigation objective.

(2) Comparable, similar or related investigations.

(3) Whether NASA or the investigator should procure the necessary supporting instrumentation or services and the relative cost of each mode.

(4) Total overall or probable costs to the Government including integration and data reduction and analysis. In the case of investigations proposed by Government investigators, this includes all associated direct and indirect cost. With respect to cooperative investigations, integration, and other applicable costs should be considered.

(e) The Project Office, as part of the in-depth evaluation of proposals that require instrumentation or support equipment, will survey all potential sources for Government-owned instrumentation or support equipment that may be made available, with or without modifications, to the potential investigator. Such items contributed by foreign cooperating groups which are still available under cooperative project agreements will also be considered for use under the terms and conditions specified in the agreements. As part of the evaluation report to the Program Office, the availability or nonavailability of instrumentation or support equipment will be indicated.

(f) Proposals which require instrumentation should be evaluated by project personnel. This evaluation should cover the inter-faces and the assessment of development risks. This evaluation should furnish the selection official with sufficient data to contribute to the instrument determinations. Important among these are:

(1) Whether the instrument requires further definition;

(2) Whether studies and designs are necessary to provide a reasonably accurate appreciation of the cost;

(3) Whether the investigation can be carried out without incurring undue cost, schedule, or risk of failure penalties; and

(4) Whether integration of the instrument is feasible.

(g) In reviewing an investigator's management plan, the Project Office should evaluate the investigator's approach for efficiently managing the work, the recognition of essential management functions, and the effective overall integration of these functions. Evaluation of the proposals under final consideration should include, but not be limited to: workload—present and future related to capacity and capability; past experience; management approach and organization; e.g.:

(1) With respect to workload and its relationship to capacity and capability, it is important to ascertain the extent to which the investigator is capable of providing facilities and personnel skills necessary to perform the required effort on a timely basis. This review should reveal the need for additional facilities or people, and provide some indication of the Government support the investigator will require.

(2) A review should be made of the investigator, the investigator's institution, and any supporting contractor's performance on prior investigations. This should assist in arriving at an assessment of the investigator and the institution's ability to perform the effort within the proposed cost and time constraints.

(3) The proposed investigator's management arrangements should be reviewed, including make or buy choices, support of any co-investigator, and preselected subcontractors or other instrument fabricators to determine whether such arrangements are justified. The review should determine if the proposed management arrangements enhance the investigator's ability to devote more time to the proposed experiment objectives and still effectively employ the technical and administrative support required for a successful investigation. In making these evaluations, the Project Office should draw on the installation's engineering, business, legal, and other staff resources, as necessary, as well as its scientific resources. If further information is needed from the proposers, it should be obtained through the proper contacts.

1872.405 Program office evaluation.

(a) A Program Office responsible for the project or program at Headquarters will receive the evaluation of the proposals, and weigh the evaluative data to determine an optimum payload or program of investigation. This determination will involve recommendations concerning individual investigations; but, more importantly, should result in a payload or program which is judged to optimize total mission return within schedule, engineering, and budgetary constraints. The recommendations should facilitate sound selection decisions by the Program AA. Three sets of recommendations result from the Program Office evaluation:

(1) Optimum payload or program of investigations, or options for alternative payloads or programs.

(2) Recommendation for final or tentative selection based on a determination of the degree of uncertainty associated with individual investigations. A tentative selection may be considered step one of a two-step selection technique.

(3) Upon consideration of the guidelines contained in 1872.502(a)(3), recommending responsibility for instrument development.

(b) The Installation Project Office evaluation is principally concerned with ensuring that the proposed investigation can be managed, developed, integrated, and executed with an appropriate probability of technical success within the estimated probable cost. The Headquarters Program Director, drawing upon these inputs, should be mainly concerned with determining a payload or program from the point of view of programmatic goals and budgetary constraints. Discipline and cost trade-offs are considered at this level. The Headquarters Program Office should focus on the potential contribution to program objectives that can be achieved under alternative feasible payload integration options.

(c) It may be to NASA's advantage to consider certain investigations for tentative selection pending resolution of uncertainties in their development. Tentative selections should be reconsidered after a period of time for final selection in a payload or program of investigations. This two-step selection process should be considered when:

(1) The potential return from the investigation is sufficient, relative to that of the other investigations under consideration, and that its further development appears to be warranted before final selection.

(2) The investigation potential is of such high priority to the program that the investigation should be developed for flight if at all possible.

(3) The investigative area is critical to the program and competitive approaches need to be developed further to allow selection of the optimum course.

(d) Based on evaluation of these considerations associated with the investigations requiring further development of hardware, the following information should be provided to the Steering Committee and the Program AA responsible for selection:

(1) The expected gain in potential return associated with the eventual incorporation of tentatively recommended investigations in the payload(s) or program.

(2) The expected costs required to develop instrumentation to the point of ''demonstrated capability.''

(3) The risk involved in added cost, probability of successfully developing the required instrument capability, and the possibility of schedule impact.

(4) Identification of opportunities, if any, for inclusion of such investigations in later missions.

(e) In those cases where investigations are tentatively selected, an explicit statement should be made of the process to be followed in determining the final payload or program of investigations and the proposers so informed. The two-phase selection approach provides the opportunity for additional assurance of development potential and probable cost prior to a final commitment to the investigation.

(f) As instruments used in investigations become increasingly complex and costly, the need for greater control of their development by the responsible Headquarters Program Office also grows. Accordingly, as an integral part of the evaluation process, a deliberate decision should be made regarding the role of the Principal Investigator with respect to the provision of the major hardware associated with that person's investigation. The guidelines for the hardware acquisition determination are discussed in 1872.502(a)(3).

(g) The range of options for responsibility for the instrumentation consists of:

(1) Assignment of full responsibility to the Principal Investigator. The responsibility includes all in-house or contracted activity to provide the instrumentation for integration.

(2) Retention of developmental responsibility by the Government with participation by the Principal Investigator in key events defined for the program. In all cases the right of the Principal Investigator to counsel and recommend is paramount. Such involvement of the Principal Investigator may include:

(i) Provision of instrument specifications.

(ii) Approval of specifications.

(iii) Independent monitorship of the development and advice to the Government on optimization of the instrumentation for the investigation.

(iv) Participation in design reviews and other appropriate reviews.

(v) Review and concurrence in changes resulting from design reviews.

(vi) Participation in configuration control board actions.

(vii) Advice in definition of test program.

(viii) Review and approval of test program and changes thereto.

(ix) Participation in conduct of the test program.

(x) Participation in calibration of instrument.

(xi) Participation in final inspection and acceptance of the instrument.

(xii) Participation in subsequent test and evaluation processes incident to integration and flight preparation.

(xiii) Participation in the development and support of the operations plan.

(xiv) Analysis and interpretation of data.

(h) The Principal Investigator should as a minimum:

(1) Approve the instrument specification.

(2) Advise the project manager in development and fabrication.

(3) Participate in final calibration.

(4) Develop and support the operations plan.

(5) Analyze and interpret the data.

(i) The Project Installation is responsible for implementing the program or project and should make recommendations concerning the role for the Principal Investigators. The Program AA will determine the role, acting upon the advice of the Headquarters Program Office and the Steering Committee. The Principal Investigator's desires will be respected in the negotiation of the person's role allowing an appeal to the Program AA and the right to withdraw from participation.

(j) The Program Office should make a presentation to the Steering Committee with supporting documentation on the decisions to be made by the responsible Program AA.

1872.406 Steering committee review.

(a) The most important role of the Steering Committee is to provide a substantive review of a potential

payload or program of investigations and to recommend a selection to the Program AA. The Steering Committee applies the collective experience of representatives from the program and discipline communities and offers a forum for discussing the selection from those points of view. In addition to this mission-specific evaluation function, the Steering Committee provides guidance to subcommittee chairpersons and serves as a clearinghouse for problems and complaints regarding the process. The Steering Committee is responsible for assuring adherence to required procedures. Lastly, it is the forum where discipline objectives are weighed against program objectives and constraints.

(b) The Steering Committee represents the means for exercising three responsibilities in the process of selecting investigations to:

(1) Review compliance with procedures governing application of the AO process.

(2) Ensure that adequate documentation has been made of the steps in the evaluation process.

(3) Review the results of the evaluation by the subcommittee, Project, and Program Offices and prepare an assessment or endorsement of a recommended payload or program of investigations to the Program AA.

(c) The Purpose in exercising the first of the responsibilities in paragraph (b) of this section is to ensure equity and consistency in the application of the process. The Steering Committee is intended to provide the necessary reviews and coordination inherent in conventional acquisition practices.

(d) The second and third responsibilities of the Steering Committee in paragraph (b) are technical. They require that the Steering Committee review the evaluations by subcommittee, the Project Office, and the Program Office for completeness and appropriateness before forwarding to the Program AA. Most important in this review are:

(1) Degree to which results of evaluations and recommendations follow logically from the criteria in the AO.

(2) Consistency with objectives and policies generally beyond the scope of Project/Program Offices.

(3) Sufficiency of reasons stated for tentative recommendations of those investigations requiring further instrument research and development.

(4) Sufficiency of reasons stated for determining responsibilities for instrument development.

(5) Sufficiency of consideration of reusable space flight hardware and support equipment for the recommended investigations.

(6) Sufficiency of reasons for classifying proposed investigations in their respective categories.

(7) Fair treatment of all proposals.

(e) The Steering Committee makes recommendations to the selection official on the payload or program of investigations and notes caveats or provisions important for consideration of the selection official.

1872.407 Principles to apply.

(a) 1872.406 contains a description of the evaluation function appropriate for a major payload or very significant program of investigation. The levels of review, evaluation, and refinement described should be applied in those selections where warranted but could be varied for less significant selection situations. It is essential to consider the principles of the several evaluative steps, but it may not be essential to consider the principles of the several evaluative steps, but it may not be essential to maintain strict adherence to the sequence and structure of the evaluation system described. The selection official is responsible for determining the evaluation process most appropriate for the selection situation using this subpart 1872.4 as a guide.

(b) Significant deviations from the provisions of this part 1872 must be fully documented and be approved by the Program AA after concurrence by the Office of General Counsel and Office of Acquisition.

Subpart 1872.5—The Selection Process

1872.501 General.

The Program AA is responsible for selecting investigations for contract negotiation. This decision culminates the evaluations and processes that can be summarized as follows:

Evaluation stage	Principal emphasis	Results
Contractor (when authorized).	Summary evaluation (strengths and weaknesses)	Report to Subcommittee.
Subcommittee individual	Science and technological relevance, value, and feasibility	Categorization of proposals.
Project Office	Engineering/cost/integration/management assessment	Reports to Subcommittee and Program Office.
Program Office	Consistency with Announcement and program objectives, and cost and schedule constraints.	Recommendations to Steering Committee of payload or program of investigations.
Steering Committee	Logic of proposed selections and compliance with proper procedures	Recommendations to Program Associate Administrator.

1872.502 Decisions to be made.

(a) The selection decisions by the Program AA constitute management judgments balancing individual and aggregate scientific or technological merit, the contribution of the recommended investigations to the AO's objectives, and their consonance with budget constraints to make the following decisions:

(1) Determination of the adequacy of scientific/technical analysis supporting the recommended selections. This supporting rationale should involve considerations including:

(i) Assurance that the expected return contributes substantially to program objectives and is likely to be realized.

(ii) Assurance that the evaluation criteria were applied consistently to all proposed investigations.

(iii) Assurance that the set of recommended investigations constitutes the optimum program or payload considering potential value and constraints.

(iv) Assurance that only one investigator is assigned as the Principal Investigator to each investigation and that the Principal Investigator will assume the associated responsibilities and be the single point of contact and leader of any other investigators selected for the same investigation.

(2) Determination as to whether available returned space hardware or support equipment, with or without modification, would be adequate to meet or support investigation objectives.

(3) Determination as to whether the proposed instrument fabricator qualifies and should be accepted as a sole source

or whether the requirement should be competitively procured. The following guidelines apply:

(i) The hardware required should be subjected to competitive solicitation where it is clear that the capability is not sufficiently unique to justify sole source acquisition.

(ii) The hardware requirement should be purchased from the fabricator proposed by the investigator, which may be the investigator's own institution,

(A) When the fabricator's proposal contains technical data that are not available from another source, and it is not feasible or practicable to define the fabrication requirement in such a way as to avoid the necessity of using the technical data contained in the proposal;

(B) When the fabricator offers unique capabilities that are not available from another source;

(C) When the selection official determines that the proposed hardware contributes so significantly to the value of the investigator's proposal as to be an integral part of it.

(iii) If a producer other than the one proposed by the investigator offers unique capabilities to produce the hardware requirement, NASA may buy the hardware from the qualified fabricator.

(iv) If a NASA employee submits a proposal as a principal investigator, any requirement for hardware necessary to perform the investigation must either be competed by the installation acquisition office or a justification must be written, synopsized, and approved in accordance with the requirements of FAR and the NASA FAR Supplement.

(4) Determination of the desirability for tentative selection of investigations. This determination involves considerations including:

(i) Assessment of the state of development of the investigative hardware, the cost and schedule for development in relation to the gain in potential benefits at the time of final selection.

(ii) Assurance that there is adequate definition of investigation hardware to allow parallel design of other project hardware.

(iii) Assurance that appropriate management procedures are contained in the project plan for reevaluation and final selection (or rejection) on an appropriate time scale.

(5) Determination of the acceptability of the proposer's management plan, including the proposed hardware development plan, and the necessity, if any, of negotiating modifications to that plan.

(b) In the process of making the determinations described in paragraph (a) (1) of this section, the Program AA may request additional information or evaluations. In most instances, this information can be provided by the Program Office responsible for the mission, project, or program. However, the Program AA may reconvene the subcommittee or poll the members individually or provide for additional analysis or require additional data from evaluators or proposers as considered necessary to facilitate the Program AA's decision.

1872.503 The selection statement.

Upon completion of deliberations, the responsible Program AA shall issue a selection statement. Ordinarily this statement will, upon request, be releasable to the public. As a minimum, the selection statement should include:

(a) The general and specific evaluation criteria and relative importance used for the selection.

(b) The categorizations provided by the subcommittee and the rationale for accepting or not accepting each Category I proposal and a succinct statement concerning the nonacceptance of all other proposals.

(c) A concise description of each investigation accepted including an indication as to whether the selection is a partial acceptance of a proposal and/or a combination with other investigators.

(d) The role of the Principal Investigator with regard to hardware essential to the investigation and whether the Principal Investigator will be responsible for hardware acquisition and the basis therefor.

(e) An indication of the plan and acquisition using the regular acquisition processes, if the Principal Investigator is not to acquire the hardware.

(f) A statement indicating whether the selection is final or tentative, recognizing the need for better definition of the investigation and its cost.

(g) A statement indicating use of Government-owned space flight hardware and/or support equipment.

1872.504 Notification of proposers.

(a) It is essential that investigators whose proposals have no reasonable chance for selection be so apprised as soon as practicable. The responsible Program Office will, upon such determination, notify investigators of that fact with the major reason(s) why the proposals were so considered. The notification letter should also inform such investigators that they may obtain a detailed oral debriefing provided they request it in writing.

(b) Letters of notification will be sent to those Principal Investigators selected to participate. This letter should not commit the agency to more than negotiations for the selected investigation, but it should indicate the decision made and contain:

(1) A concise description of the Principal Investigator's investigation as selected, noting substantive changes, if any, from the investigation originally proposed by the Principal Investigator.

(2) The nature of the selection, i.e., whether it should be considered final or tentative requiring additional hardware or cost definition.

(3) A description of the role of the Principal Investigator including the responsibility for the provision of instruments for flight experiments.

(3) Identification of the principal technical and management points to be treated in subsequent negotiations.

(5) Any rights to be granted on use of data, publishing of data, and duration of use of the data.

(6) Where applicable, indication that a foreign selectee's participation in the program will be arranged between the International Affairs Division, Office of External Relations, and the foreign government agency which endorsed the proposal.

(c) In conjunction with the notification of successful foreign proposers, the Program Office shall forward a letter to the responsible International Affairs Division, Office of External Relations, addressing the following:

(1) The scientific technological objective of the effort.

(2) The period of time for the effort.

(3) The responsibilities of NASA and of the sponsoring governmental agency; these may include:

(i) Provision and disposition of hardware and software.

(ii) Responsibilities for reporting, reduction and dissemination of data.

(iii) Responsibilities for transportation of hardware.

(4) Any additional information pertinent to the conduct of the experiment.

(d) Using the information provided above, the International Affairs Division, Office of External Relations will negotiate an agreement with the sponsoring foreign agency.

(e) Notices shall also be sent to those proposers not notified pursuant to paragraphs (a) through (d) of this section, and, as applicable, a copy to the sponsoring foreign government agency. It is important that these remaining proposers be informed at the same time

as those selected. Other agency notifications and press release procedures will apply, as appropriate.

1872.505 Debriefing.

It is the policy to debrief, if requested, unsuccessful proposers of investigations in accordance with FAR 15.1004. The following shall be considered in arranging and conducting debriefings:

(a) Debriefing shall be done by an official designated by the responsible Program AA. Any other personnel receiving requests for information concerning the rejection of a proposal shall refer to the designated official.

(b) Debriefing of unsuccessful offerors shall be made at the earliest possible time; debriefing will generally be scheduled subsequent to selection but prior to award of contracts to the successful proposers.

(c) Material discussed in debriefing shall be factual and consonant with the documented findings of several stages of the evaluation process and the selection statement.

(d) The debriefing official shall advise of weak or deficient areas in the proposal, indicate whether those weaknesses were factors in the selection, and advise of the major considerations in selecting the competing successful proposer where appropriate.

(e) The debriefing official shall not discuss other unsuccessful proposals, rankings, votes of members, or attempt to make a point-by-point comparison with successful proposals.

(f) A memorandum of record of the debriefing shall be provided the Chairperson of the Steering Committee.

Subpart 1872.6—Payload Formulation

1872.601 Payroll formulation.

(a) Payload elements for Space Transportation System (STS) missions can come from many sources. These include those selected through AOs, those generated by in-house research, unsolicited proposals and those derived from agreements between NASA and external entities. However, it is anticipated that the primary source of NASA payload elements will be the AO process. Generally, proposals for payload elements submitted outside the AO process will not be selected if they would have been responsive to an AO objective.

(b) Payload elements for STS flights fall into two major categories. ''NASA or NASA-related'' payload elements are those which are developed by a NASA Program Office or by another party with which NASA has a shared interest. ''Non-NASA'' payload elements are those which require only STS operation services from NASA and interface with NASA through the Office of Space Flight.

(c) In general, a Program Office will be designated responsibility for formulating the ''NASA or NASA-related'' portion of an STS payload. The Office of Space Flight will be responsible for formulating the ''non-NASA'' portion of an STS payload. Flights may, of course, consist wholly of payload elements of either type. Resource allocation for mixed missions will be determined by the Program Office and the Office of Space Flight.

Subpart 1872.7—Acquisition and Other Considerations

1872.701 Early involvement essential.

(a) The distinctive feature of the AO process is that it is both a program planning system and an acquisition system in one procedure. The choice of what aeronautical and space phenomena to investigate is program planning. Acquisition is involved with the purchase of property and services to carry out the selected investigations.

(b) Because of both the programmatic and multi-functional aspects of the AO process, early involvement of external program office elements is essential. Success of the process requires that it proceed in a manner that meets program goals and complies with statutory requirements and acquisition policy.

(c) The planning, preparation and selection schedule for the investigation should commence early enough to meet statutory and regulatory requirements. Chief of these are the requirements for soliciting maximum feasible competition and for conducting discussions with offerors within the competitive range by the Project Office and/or any other evaluation group or office authorized by the selection official.

1872.702 Negotiation, discussions, and contract award.

(a) The AO shall be synopsized in the Commerce Business Daily. Responses to the synopsis must be added to the AO mailing list. Every effort should be made to publish opportunities far enough in advance to encourage a broad response. (In no case less than 45 days before the date set for receipt of proposals).

(b) Significant items for consideration after receipt of proposals:

(1) Late proposals—The policy on late proposals contained in 1815.412 is applicable. Potential investigators should be informed of this policy. In the AO context, the selection official or designee will determine whether a late proposal will be considered.

(2) Competitive considerations. (i) The proposals submitted in response to the AOs are not necessarily fully comparable. However, all proposals within the scope of an opportunity must be evaluated in accordance with the criteria in the AO.

(ii) Cost must be considered in the evaluation if costs are involved in the investigation. General cost information should be given to the subcommittee by the Installation Project Office for use in determining the categories into which the subcommittee places proposals.

(iii) Further information should be obtained, as necessary, by the Installation Project Office and/or any other evaluation group authorized by the selection official and from the investigators whose proposals are being considered. This is similar to the acquisition procedure for conducting written and oral discussions. A major consideration during discussions is to avoid unfairness and unequal treatment. Good judgment is required by in the extent and content of the discussions. There should be no reluctance in obtaining the advice and guidance of management and staff offices during the discussion phase. A summary should be prepared of the primary points covered in the written and oral discussions and show the effect of the discussions on the evaluation of proposals. This summary should also contain general information about the questions submitted to the investigators, the amount of time spent in oral discussion, and revisions in proposals, if any, resulting from the discussions.

(iv) During the conduct of discussions, all proposers being considered shall be offered an equitable opportunity to submit cost, technical, or other revisions in their proposals as may result from the discussions. All proposers shall be informed that any revisions to their proposals must be submitted by a common cut-off date in order to be considered. The record should note compliance of the investigators with that cut-off date.

(c) Significant items for consideration before award:

(1) Issuance of a Request for Proposal (RFP)—A formal RFP should not be issued to obtain additional information on proposals accepted under the AO process. Additional technical, cost, or other data received should be considered as a supplement to the original proposal.

(2) Selection of Investigator/Contractor—The selection decision of the Program AA approves the selected investigators and their institutions as the only satisfactory sources for the investigations. The selection of the

investigator does not constitute the selection of that person's proposed supporting hardware fabricator unless the selection official specifically incorporates the fabricator in the selection decision.

1872.703 Application of the Federal Acquisition Regulation (FAR) and the NASA FAR Supplement.

The AO process supplants normal acquisition procedures only to the extent necessary to meet the distinctive features of the process. This process is not intended to conflict with any established statutory requirements.

1872.704 Other administrative and functional requirements.

After selection, all other applicable administrative and functional requirements will be complied with or incorporated in any resultant contract.

1872.705 Format of Announcement of Opportunity (AO).

Use the following format instructions when drafting AOs:

OMB Approval Number 2700–0085

National Aeronautics and Space Administration

Washington, DC 20546

Announcement of Opportunity

AO No. _____ (Issuance Date)

(Descriptive Heading)

I. Description of the Opportunity

This section should set forth the basic purpose of the AO and describe the opportunity in terms of NASA's desire to obtain proposals which will meet the stated scientific, applications and/or technological objectives. These objectives may be directed to the generation of proposals for investigations and/or they may pertain to the acquisition of dissimilar ideas leading to selection of investigators, guest observers, guest investigators, or theorists. In those instances where proposals for investigations are sought, this section should describe the requirement, if any, for selected investigators to serve on advisory or working groups. In those instances where the project or program has not yet been approved, a qualifying statement should be included to indicate that this AO does not constitute an obligation for the Government to carry the effort to completion.

II. AO Objectives

This section will give a succinct statement of the specific scientific, applications, and/or technological objective(s) for the opportunity(s) for which proposals are sought.

III. Background

This section should provide an explanation of the context of the opportunity, i.e., information which will help the reader understand the relevance of the opportunity.

IV. Proposal Opportunity Period

This section should provide the proposal opportunity period(s). The following methods may be used individually or in conjunction for establishing the proposal opportunity period(s):

(a) The AO may be issued establishing a single date by which proposals may be received. However, the AO could provide that the agency may amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired.

(b) The AO may be issued to provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals and the time remaining prior to the flight opportunities contemplated by the AO.

(c) The AO may be issued establishing a number of dates by which proposals may be received. Normally no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposal. If desired, this section should further inform the reader that if a proposal receives a Category I, II, or III rating but is not selected for immediate support, the proposal may, if desired by the proposer, be held by NASA for later consideration within the ground rules set forth in paragraphs 1 and 2. The section should inform the reader that if the person wishes the proposal to be so treated, it should be indicated in the proposal. This section should further indicate that offerors whose proposals are to be considered at a later time will be given the opportunity to revalidate their proposals with their institution and update cost data.

V. Requirements and Constraints

(a) This section will include technical, programmatic, cost, and schedule requirements or constraints, as applicable, and will specify performance limits such as lifetime, flight environment, safety, reliability, and quality assurance provisions for flight-worthiness. It will specify the requirements and constraints related to the flight crew and the ground support. It will also include requirements for data analysis, estimated schedule of data shipment to user for observer, need for preliminary or raw data analysis and interim reports. It will specify the planned period (time) for data analysis to be used for budgeting. It will provide any additional information necessary for a meaningful proposal.

(b) When NASA determines that instrumentation, ground support equipment, or NASA supporting effort will be required or may be expected to be required by the contemplated investigations, the AO should indicate to the potential investigators that they must submit specific information regarding this requirement to allow an in-depth evaluation of the technical aspects, cost, management, and other factors by the Installation Project Office.

VI. Proposal Submission Information

(a) Preproposal Activities—In this section, the AO will indicate requiremets and activities such as the following:

(1) Submittal of ''Notice of Intent'' to propose (if desired), date for submission, and any additional required data to be submitted. Indicate whether there are information packages which will only be sent to those who submit ''Notice of Intent.''

(2) Attendance at the preproposal conference (if held). Information should be provided as to time, place, whether attendance will be restricted in number from each institution, and whether prior notice of intention to attend is required. If desired, a request may be included that questions be submitted in writing several days before the conference in order to prepare replies.

(3) The name and address of the scientific or technical contact for questions or inquiries.

(4) Any other preproposal data considered necessary.

(b) Format of Proposals—This section should provide the investigator with the information necessary to enable an effective evaluation of the proposal. The information is as follows:

(1) Proposal—The AO should indicate how the proposal should be submitted to facilitate evaluation. The proposal should be submitted in at least two sections; (i) Investigation and Technical Section; and (ii) Management and Cost Section.

(2) Signatory—The proposal must be signed by an institutional official authorized to ensure institutional support, sponsorship of the investigation, management, and financial aspects of the proposal.

(3) Quantity—The number of copies of the proposal should be specified. One copy should be clear black and white, and on white paper of quality suitable for reproduction.

(4) Submittal Address—Proposals from domestic sources should be mailed to arrive not later than the time indicated for receipt of proposals to:

National Aeronautics and Space Administration, Office of (Program)

Code _____

AO No. _____

Washington, DC 20546

(5) Format—To aid in proposal evaluation, and to facilitate comparative analysis, a uniform proposal format will be required for each AO. The number of pages, page size, and restriction on photo reduction, etc., may be included. The format contained in Appendix C can be used as a guide. Proposers may be requested to respond to all of the items or the AO may indicate that only selected items need be addressed. Using the Appendix format as a guide, specific guidelines may be prepared for the AO or an appropriate form developed.

(c) Additional Information—This section may be used to request or furnish data necessary to obtain clear proposals that should not require further discussions with the proposer by the evaluators. Other pertinent data could also be included, such as significant milestones.

(d) Foreign Proposals—The procedures for submission of proposals from outside the U.S. are contained in Appendix B, ''General Instructions and Provisions.'' This section will describe any additional requirements, for example, if information copies of proposals are required to be furnished by the proposer to other organizations at the same time the proposal is submitted.

(e) Cost Proposals (U.S. Investigators Only)—This section defines any special requirements regarding cost proposals of domestic investigators. Reference than should be made to the cost proposal certifications indicated in Appendix B, ''General Instructions and Provisions.''

VII. Proposal Evaluation, Selection, and Implementation

(a) Evaluation and Selection Procedure.

(1) This section should notify the proposers of the evaluation process.

(2) For example, a statement similar to the following should be included:

''Proposals received in response to this AO will be reviewed by a subcommittee appointed by the (appropriate Program AA). The purpose of the review is to determine the scientific/technical merit of the proposals in the context of this AO and so categorize the proposals. Those proposals with are considered to have the greatest scientific/technical merit are further reviewed for engineering, integration, management, and cost aspects by the Project Office at the installation responsible for the project. On the basis of these reviews, and the reviews of the responsible Program Office and the Steering Committee, the (appropriate Program Associate Administrator) will appoint/select the investigators/investigations.''

(b) Evaluation Criteria.

(1) This section should indicate that the selection proposals which best meet the specific scientific, applications, and/or technological objectives, stated in the AO, is the aim of the solicitation. This section should list the criteria to be used in the evaluation of proposals and indicate their relative importance. See NASA FAR Supplement 1872.402 for a listing of criteria generally appropriate.

(2) This section will also inform the proposers that cost and management factors, e.g., proposed small business participation in instrumentation fabrication or investigation support, will be separately considered.

VIII. Schedule

This section should include the following, as applicable:

(a) Preproposal conference date.

(b) Notice of Intent submittal date.

(c) Proposal submittal date(s).

(d) Target date for announcement of selections.

IX. Appendices

(a) General Instructions and Provisions (must be attached to each AO).

(b) Other Pertinent Data, e.g., Spacelab Accommodations Data.

/s/ Associate Administrator
for (Program)

1872.705–1 Appendix A: General Instructions and Provisions

Include the following in all Announcements of Opportunity:

I. Instrumentation and/or Ground Equipment

By submitting a proposal, the investigator and institution agree that NASA has the option to accept all or part of the offeror's plan to provide the instrumentation or ground support equipment required for the investigation or NASA may furnish or obtain such instrumentation or equipment from any other source as determined by the selecting official. In addition, NASA reserves the right to require use, by the selected investigator, of Government instrumentation or property that becomes available, with or without modification, that will meet the investigative objectives.

II. Tentative Selections, Phased Development, Partial Selections, and Participation With Others

By submitting a proposal, the investigator and the organization agree that NASA has the option to make a tentative selection pending a successful feasibility or definition effort. NASA has the option to contract in phases for a proposed experiment, and to discontinue the investigative effort at the completion of any phase. The investigator should also understand that NASA may desire to select only a portion of the proposed investigation and/or that NASA may desire the individual's participation with other investigators in a joint investigation, in which case the investigator will be given the opportunity to accept or decline such partial acceptance or participation with other investigators prior to a selection. Where participation with other investigators as a team is agreed to, one of the team members will normally be designated as its team leader or contact point.

III. Selection Without Discussion

The Government reserves the right to reject any or all proposals received in response to this AO when such action shall be considered in the best interest of the Government. Notice is also given of the possibility that any selection may be made without discussion (other than discussions conducted for the purpose of minor clarification). It is therefore emphasized that all proposals should be submitted initially on the most favorable terms that the offeror can submit.

IV. Foreign Proposals

See Appendix B, Management Plan and Cost Plan, paragraph (a)(3).

V. Treatment of Proposal Data

It is NASA policy to use information contained in proposals and quotations for evaluation purposes only. While this policy does not require that the proposal or quotation bear a restrictive notice, offerors or quoters should place the following notice on the title page of the proposal or quotation and specify the information, subject to the notice by inserting appropriate identification, such as page numbers, in the notice. Information (data) contained in proposals and quotations will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice. To prevent inadvertent disclosure, proposal data shall not be included in submissions (e.g. final reports) that are routinely released to the public.

Restriction on Use and Disclosure of Proposal and Quotation Information (Data)

The information (data) contained in [insert page numbers or other identification] of this proposal or quotation constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed for other than evaluation purposes; provided, however, that in the event a contract is awarded on the basis of this proposal or quotation the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

VI. Status of Cost Proposals (U.S. Proposals Only)

The investigator's institution agrees that the cost proposal is for proposal evaluation and selection purposes, and that following selection and during negotiations leading to a definitive contract, the institution may be required to resubmit cost information in accordance with FAR 15.8.

VII. Late Proposals

The Government reserves the right to consider proposals or modifications thereof received after the date indicated, should such action be in the interest of the Government.

VIII. Source of Space Transportation System Investigations

Investigators are advised that candidate investigations for Space Transportation System (STS) missions can come from many sources.

IX. Disclosure of Proposals Outside Government

NASA may find it necessary to obtain proposal evaluation assistance outside the Government. Where NASA determines it is necessary to disclose a proposal outside the Government for evaluation purposes, arrangements will be made with the evaluator for appropriate handling of the proposal information. Therefore, by submitting a proposal the investigator and institution agree that NASA may have the proposal evaluated outside the Government. If the investigator or institution desire to preclude NASA from using an outside evaluation, the investigator or institution should so indicate on the cover. However, notice is given that if NASA is precluded from using outside evaluation, it may be unable to consider the proposal.

X. Equal Opportunity (U.S. Proposals Only)

By submitting a proposal, the investigator and institution agree to accept the following clause in any resulting contract:

Equal Opportunity

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(b) 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. This shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Contractor shall, 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.

(e) The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding the notice to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO–1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(h) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(i) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, the contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(j) The Contractor shall include the terms and conditions of subparagraph 1 through 9 of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(k) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for non-compliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

XI. Patent Rights

(a) For any contract resulting from this solicitation awarded to other than a small business firm or nonprofit organization, the clause at 1852.227–70, ''New Technology,'' shall apply. Such contractor may, in advance of contract, request waiver of rights as set forth in the provision at 1852.227–71, ''Request for Waiver of Rights to Inventions.''

(b) For any contract resulting from this solicitation awarded to a small business firm or nonprofit organization, the clause at FAR 52.227–11, ''Patent Rights—Retention by the Contractor (Short Form)'' (as modified by 1852.227–11), shall apply.

1872.705–2 Appendix B: Guidelines for Proposal Preparation

The following guidelines apply to the preparation of proposals in response to an AO. The material is a guide for the proposer and not intended to be encompassing or directly applicable to the various types of proposals which can be submitted. The proposer should provide information relative to those items applicable or as required by the AO.

I. Cover Letter

A letter or cover page should be forwarded with the proposal signed by the investigator and an official by title of the investigator's organization who is authorized to commit the organization responsible for the proposal.

II. Table of Contents

The proposal should contain a table of contents.

III. Identifying Information

The proposal should contain a short descriptive title for the investigation, the names of all investigators, the name of the organization or institution and the full name, address, and telephone number of the Principal Investigator.

Investigation and Technical Plan

(a) Investigation and Technical Plan

The investigation and technical plan generally will contain the following:

(1) Summary. A concise statement about the investigation, its conduct, and the anticipated results.

(2) Objective and Significant Aspects. A brief definition of the objectives, their value, and their relationships to past, current, and future effort. The history and basis for the proposal and a demonstration of the need for such an investigation. A statement of present development in the discipline field.

(3) Investigation Approach.

(i) Fully describe the concept of the investigation.

(ii) Detail the method and procedure for carrying out the investigation.

(b) Instrumentation

This section should describe all information necessary to plan for experiment development, integration, ground operations, and flight operations. This section must be complete in itself without need to request additional data. Failure to furnish complete data may preclude evaluation of the proposal.

(1) Instrument Description—This section should fully describe the instrument and indicate items which are proposed to be developed as well as any existing instrumentation. Performance characteristics should be related to the experiment objectives as stated in the proposal.

(2) Instrument Integration—This section should describe all parameters of the instrument pertinent to the accommodation of the instrument in the spacecraft, Spacelab, Shuttle Orbiter, Space Station, etc. These include, but are not limited to, volumetric envelope; weight; power requirements; thermal requirements; telemetry requirement; sensitivity to or generation of contamination (e.g., EMI gaseous effluent); data processing requirements.

(3) Ground Operations—This section should identify requirements for pre-launch or post-launch ground operations support.

(4) Flight Operations—This section should identify any requirements for flight operations support including mission planning. Operational constraints, viewing requirements, and pointing requirements should also be identified. Details of communications needs, tracking needs, and special techniques, such as extravehicular activity or restrictions in the use of control thrusters at stated times should be delineated. Special communications facilities that are needed must be described. Any special orbital requirements, such as time of month, of day, phase of moon, and lighting conditions are to be given in detail. Describe real-time ground support requirements and indicate any special equipment or skills required of ground personnel.

(c) Data Reduction and Analysis

A discussion of the data reduction and analysis plan including the method and format. A section of the plan should include a schedule for the submission of reduced data to the receiving point. In the case of Space Science programs, the National Space

Science Data Center, Greenbelt, MD, will be the repository for such data and the Department of Interior, Sioux Falls, SD, for earth observations data.

(d) Orbiter Crew and/or Payload Specialist Training Requirement

A description of the tasks required of each crew member (Commander, Pilot, Mission Specialist) or payload specialist should be provided, including the task duration and equipment involved. Indicate special training necessary to provide the crew members or payload specialist(s) with the capability for performing the aforementioned tasks.

Management Plan and Cost Plan

(a) Management Plan

The management plan should summarize the management approach and the facilities and equipment required. Additional guidelines applicable to non-U.S. proposers are contained herein:

(1) Management

(i) The management plan sets forth the approach for managing the work, the recognition of essential management functions, and the overall integration of these functions.

(ii) The management plan gives insight into the organization proposed for the work, including the internal operations and lines of authority with delegations, together with internal interfaces and relationships with the NASA major subcontractors and associated investigators. Likewise, the management plan usually reflects various schedules necessary for the logical and timely pursuit of the work accompanied by a description of the investigator's work plan and the responsibilities of the co-investigators.

(iii) The plan should describe the proposed method of instrument acquisition. It should include the following, as applicable.

(A) Rationale for the investigator to obtain the instrument through or by the investigator's institution.

(B) Method and basis for the selection of the instrument fabricator.

(C) Unique capabilities of the instrument fabricator that are not available from any other source.

(D) Characteristics of the proposed fabricator's instrument that make it an inseparable part of the investigation.

(E) Availability of personnel to administer the instrument contract and technically monitor the fabrication.

(F) Status of development of the instrument.

(G) Method by which the investigator proposes to:

(*a*) Prepare instrument specifications.

(*b*) Review development progress.

(*c*) Review design and fabrication changes.

(*d*) Participate in testing program.

(*e*) Participate in final checkout and calibration.

(*f*) Provide for integration of instrument.

(*g*) Support the flight operations.

(*h*) Coordinate with co-investigators, other related investigations, and the payload integrator.

(*i*) Assure safety, reliability, and quality.

(*j*) Provide required support for Payload Specialist(s), if applicable.

(H) Planned participation by small and/or minority business in any subcontracting for instrument fabrication or investigative support functions.

(2) Facilities and Equipment

All major facilities, laboratory equipment, and ground-support equipment (GSE) (including those of the investigator's proposed contractors and those of NASA and other U.S. Government agencies) essential to the experiment in terms of its system and subsystems are to be indicated, distinguishing insofar as possible between those already in existence and those that will be developed in order to execute the investigation. The outline of new facilities and equipment should also indicate the lead time involved and the planned schedule for construction, modification, and/or acquisition of the facilities.

(3) Additional Guidelines Applicable to Non-U.S. Proposers Only

The following guidelines are established for foreign responses to NASA's AO. Unless otherwise indicated in a specific announcement, these guidelines indicate the appropriate measures to be taken by foreign proposers, prospective foreign sponsoring agencies, and NASA leading to the selection of a proposal and execution of appropriate arrangements. They include the following:

(i) Where a ''Notice of Intent'' to propose is requested, prospective foreign proposers should write directly to the NASA official designated in the AO and send a copy of this letter to the International Relations Division, Office of External Relations, Code IR, NASA, Washington, DC 20546, U.S.A.

(ii) Unless otherwise indicated in the AO, proposals will be submitted in accordance with this Appendix excluding cost plans. Proposals should be typewritten and written in English.

(iii) Persons planning to submit a proposal should arrange with an appropriate foreign governmental agency for a review and endorsement of the proposed activity. Such endorsement by a foreign organization indicates that the proposal merits careful consideration by NASA and that, if the proposal is selected, sufficient funds will be available to undertake the activity envisioned.

(iv) Proposals including the requested number of copies and letters of endorsement from the foreign governmental agency must be forwarded to NASA in time to arrive before the deadline established for each AO. These documents should be sent to:

National Aeronautics and Space Administration, International Relations Division, Code IR, Office of External Relations, Washington, DC 20546, U.S.A.

(v) Those proposals received after the closing date will be treated in accordance with NASA's provisions for late proposals. Sponsoring foreign government agencies may, in exceptional situations, forward a proposal directly to the above address if review and endorsement is not possible before the announced closing date. In such cases, NASA should be advised when a decision on endorsement can be expected.

(vi) Shortly after the deadline for each AO, NASA's International Relations Division will be advised the appropriate sponsoring agency which proposals have been received and when the selection process should be completed. A copy of this acknowledgment will be provided to each proposer.

(vii) Successful and unsuccessful proposers will be contacted directly by the NASA Program Officer coordinating the AO. Copies of these letters will be sent to the sponsoring Government agency.

(viii) NASA's International Relations Division will then begin making the arrangements to provide for the selectee's participation in the appropriate NASA program. Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

(A) A letter of notification by NASA.

(B) An exchange of letters between NASA and the sponsoring foreign governmental agency.

(C) An agreement or Memorandum of Understanding between NASA and the sponsoring foreign governmental agency.

(b) Cost Plan (U.S. Investigations Only)

The cost plan should summarize the total investigation cost by major categories of cost as well as by function.

(1) The categories of cost should include the following:

(i) Director Labor—List by labor category, with labor hours and rates for each. Provide actual salaries of all personnel and the percentage of time each individual will devote to the effort.

(ii) Overhead—Include indirect costs. Usually this is in the form of a percentage of the direct labor costs.

(iii) Materials—This should give the total cost of the bill of materials including estimated cost of each major item. Include lead time of critical items.

(iv) Subcontracts—List those over $25,000, specify the vendor and the basis for estimated costs. Include any baseline or supporting studies.

(v) Special Equipment—Include a list of special equipment with lead and/or development time.

(vi) Travel—List estimated number of trips, destinations, duration, purpose, number of travelers, and anticipated dates.

(vii) Other Costs—Costs not covered elsewhere.

(viii) General and Administrative Expense—This includes the expenses of the institution's general and executive offices and other miscellaneous expenses related to the overall business.

(ix) Fee (if applicable).

(2) Separate schedules, in the above format, should be attached to show total cost allocable to the following:

(i) Principal Investigator and other Investigators' costs.

(ii) Instrument costs.

(iii) Integration costs.

(iv) Data reduction and analysis including the amount and cost of computer time.

(e) If the effort is sufficiently known and defined, a funding obligation plan should provide the proposed funding requirements of the investigations by quarter and/or annum keyed to the work schedule.

1872.705–3 Appendix C: Glossary of Terms and Abbreviations Associated with Investigations.

Advisory Committee Subcommittee—Any committee, board, commission, council, conference, panel, task force; or other similar group, or any subcommittee or other subgroup thereof, that is not wholly composed of full-time Federal Government employees, and that is established or utilized by NASA in the interest of obtaining advice or recommendations.

Announcement of Opportunity (AO)—A document used to announce opportunities to participate in NASA programs.

AO Process—A term used to describe the program planning and acquisition procedure used to acquire investigative effort, initiated by an AO.

Categorization—The process whereby proposed investigations are classified into four categories: synopsized here as Category I—recommended for immediate acceptance; Category II—recommended for acceptance but at a lower priority than Category I proposals; Category III—sound investigations requiring further development; Category IV—rejected.

Co-Investigator (Co-I)—Associate of a Principal Investigator, responsible to the Principal Investigator for discrete portions or tasks of the investigation. A NASA employee can participate as a Co-I on an investigation proposed by a private organization.

Data Users—Participants in NASA programs, selected to perform investigations utilizing data from NASA payloads or facilities.

Experiments—Activities or effort aimed at the generation of data. NASA-sponsored experiments generally concern generation of data obtained through measurement of aeronautical and space phenomena or use of space to observe earth phenomena.

Federal Acquisition Regulation (FAR)—The regulations governing the conduct of acquisition.

Flight—That portion of the mission encompassing the period from launch to landing or launch to termination of the active life of spacecraft. The term shuttle ''flight'' means a single shuttle round trip—its launch, orbital activity, and return; one flight might deliver more than one payload. More than one flight might be required to accomplish one mission.

Flight Investigaton—Investigation conducted utilizing aeronautical or space instrumentation.

Flight Opportunity—A flight mission designed to accommodate one or more experiments or investigations.

Guest Investigators—Investigators selected to conduct observations and obtain data within the capability of a NASA mission, which are additional to the mission's primary objectives. Sometimes referred to as Guest Observers

Investigaton—Used interchangeably with ''Experiments.''

Investigation Team—A group of investigators collaborating on a single investigation.

Investigator—A participant in an investigation. May refer to the Principal Investigator, Co-Investigator, or member of an investigation team.

Mission—The performance of a coherent set of investigations or operations in space to achieve program goals. (Example: Measure detailed structure of Sun's chromosphere; survey mineral resources of North America.)

NASA FAR Supplement—Acquisition regulations promulgated by NASA in addition to the FAR.

NMI—NASA Management Instruction.

Notice of Intent—A notice or letter submitted by a potential investigator indicating the intent to submit a proposal in response to an AO.

Payload—A specific complement of instruments, space equipment, and support hardware carried to space to accomplish a mission or discrete activity in space.

Peer Group—A gathering of experts in related disciplinary areas convened as a subcommittee of the Program Office Steering Committee to review proposals for flight investigations.

Peer Review—The process of proposal review utilizing a group of peers in accordance with the categorization criteria as outlined in this Handbook.

Principal Investigator (PI)—A person who conceives an investigation and is responsible for carrying it out and reporting its results. A NASA employee can participate as a PI only on a government-proposed investigation.

Program—An activity involving human resources, materials, funding, and scheduling necessary to achieve desired goals.

Project—Within a program, an undertaking with a scheduled beginning and ending, which normally involves the design, construction, and operation of one or more aeronautical or space vehicles and necessary ground support in order to accomplish a scientific or technical objective.

Project Office—An office generally established at a NASA field installation to manage a project.

Selection Official—The NASA official designated to determine the source for award of a contract or grant.

Space Facility—An instrument or series of instruments in space provided by NASA to satisfy a general objective or need.

Steering Committee—A standing NASA sponsored committee providing advice to the Program Associate Administrators and providing procedural review over the investigation selection process. Composed wholly of full-time Federal Government employees.

Study Office—An office established at a NASA field installation to manage a potential undertaking which has not yet developed into project status.

Subcommittee—An arm of the Program Office Steering Committee consisting of experts in relevant disciplines to review and categorize proposals for investigations submitted in response to an AO.

Supporting Research and Technology (SR&T)—The programs devoted to the conduct of research and development necessary to support and sustain NASA programs.

Team—A group of investigators responsible for carrying out and reporting the results of an investigation or group of investigations.

Team Leader—The person appointed to manage and be the point of contact for the team and who is responsible for assigning respective roles and privileges to the team members and reporting the results of the investigation.

Team Member—A person appointed to a team who is an associate of the other members of the team and is responsible to the team leader for assigned tasks or portions of the investigation.

[FR Doc. 97–1864 Filed 1–29–97; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1166

[STB Ex Parte No. 620]

Removal of Obsolete Regulations Concerning Extension of Operations by Water Carriers

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is removing from the Code of Federal Regulations obsolete regulations concerning the extension of operations by water carriers over newly completed sections of waterways.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC) and established the Board within the Department of Transportation. Section 204(a) of the ICCTA provides that ''[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act.''

As here relevant, under the prior law, water common carriers needed a certificate to provide transportation (former section 10922) and water contract carriers needed a permit (former section 10923). *See also* former 49 U.S.C. 10921. However, under former 49 U.S.C. 10922(h)(3)(B), a water common carrier with authority to operate over a completed portion of a waterway had a right to extend its transportation over newly completed portions as they were opened for navigation. The regulations at 49 CFR part 1166 implemented that provision by specifying, *inter alia*, that if service was instituted over the newly completed waterway within 120 days after it was opened for navigation, the ICC would issue a certificate of public convenience and necessity without proof of public convenience and necessity.[1]

The ICCTA removed the licensing requirements of former sections 10921, 10922, and 10923 as they pertain to water carriers.[2] Because the statutory basis (former section 10922) for the regulations at 49 CFR part 1166 has been eliminated, we will remove those regulations.

[1] The ICC, on June 11, 1941, prescribed the form and content of applications for extension of service. These regulations were first issued at 6 FR 3118 (June 27, 1941) and codified at then 49 CFR part 305. *See John I. Hay Co. Extension-Bayou Sorrel Lock,* 285 I.C.C. 229, 230 (1952).

[2] *See Champion's Auto Ferry, Inc.—Revocation of Certificate,* Docket No. WC 1548 (Sub-No. 1C) (STB served Feb. 27, 1996). *See also Removal of Obsolete Regulations Concerning Water Carriers,* STB Ex Parte No. 557 (STB served Oct. 17, 1996) (removing obsolete water carrier regulations related to miscellaneous statutory exemptions).

Because this action merely reflects, and is required by, the enactment of the ICCTA and will not have an adverse effect on the interests of any person, this action will be made effective on the date of publication in the Federal Register.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1166

Administrative practice and procedure.

Decided: January 16, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

PART 1166—[REMOVED]

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended by removing part 1166.

[FR Doc. 97–2317 Filed 1–29–97; 8:45 am]

BILLING CODE 4915–00–P

Proposed Rules

Federal Register
Vol. 62, No. 20
Thursday, January 30, 1997

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 ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 375

[Docket No. RM–95–16–000]

Regulations for the Relicensing of Hydroelectric Projects

January 23, 1997.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of comment dates.

SUMMARY: On November 26, 1996, the Commission issued a Notice Proposed Rulemaking (61 FR 64031, December 3, 1996) proposing revisions to its regulations for the relicensing of hydropower projects. The dates for filing initial comments and reply comments are being extended at the request of the U.S. Department of the Interior and the National Hydropower Association.

DATES: Initial comments should be filed on or before April 4, 1997; reply comments should be filed on or before May 5, 1997.

ADDRESSES: Federal Energy Regulatory Commission, 888 1st Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, 202–208–0400.

SUPPLEMENTARY INFORMATION: On January 13, 1997 and January 14, 1997, the U.S. Department of the Interior (DOI) and the National Hydropower Association (NHA) filed respective motions for an extension of time to file comments in response to the Commission's Notice of Proposed Rulemaking issued November 26, 1996, in the above-docketed proceeding. In its motion, DOI states that additional time is needed because the proposed rule raises significant issues which require considerable evaluation and coordination with other agencies for the preparation of responsive comments. NHA states that an extension is required to allow further consultation with NHA's membership and others to assure properly focused and constructive comments. NHA further states that the American Public Power Association and the Edison Electric Institute join NHA in the motion for additional time.

Upon consideration, notice is hereby given that an extension of time for filing initial comments is granted to and including April 4, 1997. Reply comments shall be filed on or before May 5, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2261 Filed 1–29–97; 8:45 am]

BILLING CODE 6717–01–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

RIN 0960–AE30

Application of State Law in Determining Child Relationship

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rule.

SUMMARY: We are proposing to revise our rules on determining whether a natural child has inheritance rights under appropriate State law and therefore may be entitled to Social Security benefits as the child of an insured worker. Specifically, we propose to revise our rules to explain which version of State law we will apply, depending on whether the insured is living or deceased, how we will apply State law requirements on time limits for determining inheritance rights, and how we will apply State law requirements for a court determination of paternity. We are also proposing to clarify our current rule on determining an applicant's status as a legally adopted child of an insured individual.

DATES: Your comments will be considered if we receive them no later than March 31, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to ''regulations@ssa.gov,'' or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Lois Berg, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1713.

SUPPLEMENTARY INFORMATION:

Time for Determining Relationship of Natural Child

Section 216(h)(2)(A) of the Social Security Act (the Act) states in part that in determining whether an applicant is the child of a deceased insured individual, the Commissioner shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which the insured individual was domiciled at the time of his or her death. A child of a valid marriage has inheritance rights under the laws of all States.

When determining the relationship of an illegitimate child to a deceased insured person under section 216(h)(2)(A), we have always looked to the law that was in effect in the insured's State of domicile at the time he or she died. Some Federal courts have also interpreted the provision this way. See *Schaefer on behalf of Schaefer,* 792 F.2d 81 (7th Cir. 1986); *Ramon* v. *Califano,* 493 F. Supp. 158 (W.D. Tex. 1980); and *Allen* v. *Califano,* 452 F. Supp. 205 (D. Md. 1978).

Other courts have adopted different interpretations. For example, in *Owens* v. *Schweiker,* 692 F.2d 80 (9th Cir. 1982), the court held that section 216(h)(2)(A) should be read to require the use of the State law of domicile that was in effect at the time of the Secretary's determination on the child's claim. We, therefore, published a final rule (49 FR 21512) on May 22, 1984, amending § 404.354 of our regulations to clarify and reinforce our policy on applying State inheritance laws. However, after we amended our regulations, we also published Acquiescence Ruling (AR) 86–17(9) to clarify that we would apply the *Owens* decision to claims of children residing in the 9th Circuit. (When these

proposed regulations are published as final rules, we will rescind AR 86–17(9).)

Still other courts have held that the relevant law is the law in force at the time the child applies for benefits (see *Cox on behalf of Cox* v. *Schweiker,* 684 F.2d 310 (5th Cir. 1982); and *Hart by and through Morse* v. *Bowen,* 802 F.2d 1334 (11th Cir. 1986)).

Recognizing that the language in section 216(h)(2)(A) could be viewed as ambiguous and has not been interpreted the same by all courts, we are proposing to amend our policy as stated in § 404.354(b). We believe that a policy that permits us to apply any of several potentially applicable State inheritance laws would best effectuate Congress' intent with regard to serving the interests of surviving illegitimate children. Therefore, when the insured is deceased, we propose to determine the status of his or her illegitimate child by applying the State inheritance law that is in effect when we adjudicate the child's claim for benefits. If the child does not have inheritance rights under that version of State law, we will apply the State law that was in effect when the insured died, or any version of State law in effect from the time the child first could be entitled to benefits based on his or her application until the time we make our final decision on the claim, whichever version is more beneficial to the child.

We also explain in these proposed regulations how we will determine which law was in effect as of the date of death. First we will look to the inheritance law that was in effect on the date of the insured's death. Then, if a law enacted after the insured's death is retroactive to the date of his or her death, we will apply that law. However, if a law in effect at the time of death was later declared unconstitutional, we will apply the State law which superseded the unconstitutional law.

Regarding the child of a living insured worker, our current rule in § 404.354(b) provides that the Commissioner of Social Security (the Commissioner) will apply the inheritance law that was in effect when the child's claim was filed. We are proposing to amend §§ 404.354 and 404.355 to clarify that we will look to the versions of State inheritance laws that were in effect from the first month for which the child could be entitled to benefits up to and including the time of our final decision and we will apply the version most beneficial to the child.

State Law Time Limits

As previously stated, section 216(h)(2)(A) of the Act provides that, in determining whether an applicant is the child of a deceased insured individual, the Commissioner shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which the insured individual was domiciled at the time of his or her death. That section further states that an applicant who, according to such law, would have the same status relative to taking intestate personal property as a child or parent shall be deemed such respective child or parent.

Many State laws impose time limits on when someone must act to establish paternity for purposes of intestate succession. Such time limits are intended to provide for an orderly and expeditious settlement of estates. Since this is not the purpose of Social Security benefits for children, we provide in these proposed regulations that we will not apply a State's time limits relative to the time at which a child's relationship must be established when we determine the child's status under section 216(h)(2)(A). Not applying time limits is consistent with our belief that such a policy on applying State inheritance laws will best serve the interests of the children Congress sought to protect when it enacted section 216(h)(2)(A) of the Act.

Court Order Requirements

Some State laws require a court determination of paternity for an illegitimate child to have inheritance rights. In determining a child's status under section 216(h)(2)(A), our policy has been to require that a claimant submit a court determination of paternity if one is required under State inheritance law. However, we propose to revise this policy by stating in these rules that in a State that requires a court determination of paternity, we will use the standard of proof that the State court would use as the basis for such a determination, but we will not actually require a determination by a State court. Of course, if a State court with jurisdiction over the matter declares that a child can take a child's share of an insured individual's estate through intestacy, or if a State court determines a child's paternity and such determination would prevail in that State's intestacy proceedings, SSA could generally rely on such State court findings. So, while we will not require an applicant to obtain a State court's determination, we will be guided by such determinations that an applicant has obtained, subject to the prerequisites stated in Social Security Ruling 83–37c for accepting State court determinations. Those prerequisites are: (1) an issue in a claim for Social Security benefits previously has been determined by a State court of competent jurisdiction; (2) this issue was genuinely contested before the State court by parties with opposing interests; (3) the issue falls within the general category of domestic relations law; and (4) the resolution by the State trial court is consistent with the law enunciated by the highest court in the State.

If we evaluate paternity by using the same standards that the appropriate State court would use if the issue were properly before it, we believe we will satisfy the intent of section 216(h)(2)(A) that we apply ''such law as would be applied'' by the State court to determine inheritance rights. We believe that the requirement of section 216(h)(2)(A) to apply State law will be satisfied if we apply the same substantive standard as a State court would apply to determine paternity.

Legally Adopted Child

The provisions for paying benefits to children of an insured individual were added to the Act by the Social Security Act Amendments of 1939 (Public Law 76–379). Our policy for determining whether an applicant qualifies as the ''child'' of an insured individual has always been that we apply State law on inheritance rights to determine the status under the Act of a natural child, i.e., biological child, and State law on adoption to determine the status of a child legally adopted by the insured. To avoid any uncertainty about our policy, we are proposing to amend our regulations to state more clearly how we determine a child's status as an individual's natural child or adopted child.

Section 202(d)(1) of the Act provides for benefits to a child as defined in section 216(e) of the Act. Section 216(e) states, in part, that the term ''child'' means the child or legally adopted child of an individual. Section 216(e) further states the requirements for a person to be deemed the legally adopted child of a deceased individual. Section 216(e) thus distinguishes between a natural child and an adopted child.

Further, section 216(h)(2)(A) provides that the status of an applicant for benefits as a child (as opposed to a legally adopted child, a stepchild, or other type of individual who can qualify under section 216(e) of the Act as a ''child'' for purposes of section 202(d) of the Act) is determined by applying the law on devolution of intestate personal property that would be applied by the courts in the State of the insured individual's domicile. This is a test for the status of a natural child only.

The legislative history of sections 216(e) and 216(h)(2)(A) shows that Congress intended us to use section 216(h)(2)(A) to determine the status of natural children only. Section 209(k), enacted in 1939, provided the first definition of ''child'' by stating in part that the term means the child of an individual, the stepchild of an individual, and a child legally adopted by an individual before he or she attained age 60 and prior to the beginning of the twelfth month before the month in which he or she died. Section 209(m), also enacted in 1939, contained language that is the same as the present section 216(h)(2)(A) and described how we determine whether an applicant is the ''child'' of the insured individual.

Then in 1946, Congress amended section 209(k) to allow some children adopted by individuals aged 60 or older to receive benefits. Congress' explanation of the amended section 209(k) was that under existing provisions of the Act, a stepchild or an adopted child is not a ''child'' for benefit purposes unless certain conditions are met. H.R. Rep. No. 2526, 79th Cong., 2d Sess. 26 (1946); S. Rep. No. 1862, 79th Cong., 2d Sess. 34 (1946). Thus, since the first provision for paying benefits to children of an insured worker, there has been a clearly defined distinction between natural children and adopted children and clearly defined conditions for determining the status of an adopted child, which conditions are not affected by section 216(h)(2)(A).

Along with the structure of the Act and the legislative history of provisions defining ''child,'' we have consistently interpreted the State intestacy law provisions of section 216(h)(2)(A) as not applying to children legally adopted by the insured individual. Our first regulation on the status of a child was published in 1940. That regulation defined a ''child'' as a son or daughter (by blood) of a wage earner and then went on to define ''adopted children.'' 5 FR 1880 (May 21, 1940). We have maintained that position from the first regulation to the present. In the present § 404.354, we state that a child may be related to the insured as a natural child, legally adopted child, stepchild, grandchild, stepgrandchild, or equitably adopted child. In § 404.355, we explain the conditions for eligibility as a natural child, which include applying State inheritance law, and in § 404.356 we state the requirement for eligibility as a legally adopted child.

In these proposed regulations, we are amending § 404.356 to explicitly provide that we will determine an applicant's status as a legally adopted child by applying the adoption laws of the State or foreign country where the adoption took place.

Addition of Northern Mariana Islands

Further, we are proposing to add the Northern Mariana Islands to the names of entities whose laws we will use to determine a child's relationship to the insured individual, depending on his or her permanent home.

Electronic Versions

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the Federal Register. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed regulations impose no additional reporting or recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: January 17, 1997.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, we are proposing to amend subpart D of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.354 is revised to read as follows:

§ 404.354 Your relationship to the insured.

You may be related to the insured person in one of several ways and be entitled to benefits as his or her child, i.e., as a natural child, legally adopted child, stepchild, grandchild, stepgrandchild, or equitably adopted child. For details on how we determine your relationship to the insured person, see §§ 404.355 through 404.359.

3. Section 404.355 is revised to read as follows:

§ 404.355 Who is the insured's natural child?

(a) *Eligibility as a natural child.* You may be eligible for benefits as the insured's natural child if one of the following conditions is met:

(1) You could inherit the insured's personal property as his or her natural child under State inheritance laws, as described in paragraph (b) of this section.

(2) You are the insured's natural child and the insured and your mother or father went through a ceremony which would have resulted in a valid marriage between them except for a ''legal impediment'' as described in § 404.346(a).

(3) You are the insured's natural child and your mother or father has not married the insured, but the insured has either acknowledged in writing that you are his or her child, been decreed by a court to be your father or mother, or been ordered by a court to contribute to your support because you are his or her child. If the insured is deceased, the acknowledgment, court decree, or court order must have been made or issued before his or her death. To determine whether the conditions of entitlement are met throughout the first month as stated in § 404.352(a), the written acknowledgment, court decree, or court order will be considered to have occurred on the first day of the month in which it actually occurred.

(4) Your mother or father has not married the insured but you have evidence other than the evidence described in paragraph (a)(3) to show that the insured is your natural father or mother. Additionally, you must have evidence to show that the insured was either living with you or contributing to your support at the time you applied for benefits. If the insured is not alive at the time of your application, you must have evidence to show that the insured was either living with you or contributing to your support when he or she died. See § 404.366 for an explanation of the terms ''living with'' and ''contributions for support.''

(b) *Use of State Laws—(1) General.* To decide whether you have inheritance rights as the natural child of the insured, we use the law on inheritance rights that the State courts would use to decide whether you could inherit a child's share of the insured's personal property if the insured were to die without leaving a will. If the insured is living, we look to the laws of the State where the insured has his or her permanent home when you apply for benefits. If the insured is deceased, we look to the laws of the State where the insured had his or her permanent home when he or she died. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands, we will look to the laws of the District of Columbia. For a definition of permanent home, see § 404.303. For a further discussion of the State laws we use to determine whether you qualify as the insured's natural child, see paragraphs (b)(3) and (b)(4) of this section. If these laws would permit you to inherit the insured's personal property as his or her child, we will consider you the child of the insured.

(2) *Standards.* We will not apply any State inheritance law requirement that an action to establish paternity must be taken within a specified period of time measured from the worker's death or the child's birth, or that an action to establish paternity must have been started or completed before the worker's death. If applicable State inheritance law requires a court determination of paternity, we will not require that you obtain such a determination but will decide your paternity by using the standard of proof that the State court would use as the basis for a determination of paternity.

(3) *Insured is living.* If the insured is living, the inheritance laws that we use are those that are in effect in the State where the insured has his or her permanent home when we make our final decision on your application for benefits. We will apply the version of State law in effect when we make that decision. If you do not qualify as a child of the insured under that version of State law, we look at all versions of State law that were in effect from the first month for which you could be entitled to benefits up until the time of our final decision and apply the version of State law that is most beneficial to you.

(4) *Insured is deceased.* If the insured is deceased, we apply the law of the State where the insured had his or her permanent home when he or she died. We apply the version of State law in effect when we make our final decision on your application for benefits. If you do not qualify as a child of the insured under that version of State law, we will apply the version of State law that was in effect at the time the insured died, or any version of State law in effect from the first month for which you could be entitled to benefits up until our final decision on your application. We will apply whichever version is most beneficial to you. We use the following rules to determine the law in effect as of the date of death:

(A) If a State inheritance law enacted after the insured's death indicates that the law would be retroactive to the time of death, we will apply that law; or

(B) If the inheritance law in effect at the time of the insured's death was later declared unconstitutional, we will apply the State law which superseded the unconstitutional law.

4. Section 404.356 is amended by adding a sentence at the end to read as follows:

§ 404.356 Who is the insured's legally adopted child?

* * * We apply the adoption laws of the State or foreign country where the adoption took place, not the State inheritance laws described in § 404.355, to determine whether you are the insured's legally adopted child.

[FR Doc. 97–2315 Filed 1–29–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 286

RIN 1076–AD70

Indian Business Development Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to revise the regulations governing Indian Business Development Program (IBDP) grants. The rule has been abbreviated and rewritten in plain English as a part of the President's initiative to make rules easier to understand.

DATES: Comments must be received on or before March 31, 1997.

ADDRESSES: Mail comments to Nancy Jemison, Director, Office of Economic Development, Bureau of Indian Affairs, Department of the Interior, 1849 C St. NW, Mail Stop 2061–MIB, Washington, DC 20240; OR, hand deliver them to Room 2061 at the above address. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately 2 weeks after publication of this document in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Woody Sneed, Financial Analyst, Office of Economic Development, Bureau of Indian Affairs at telephone (202) 208–4796.

SUPPLEMENTARY INFORMATION:

Background

The IBDP grant program has been discontinued but grantees having already received grants must report on the financial status of their businesses for five years after date of receipt of the grants. The new rule deletes references to applications and their required contents but retains reporting requirements.

Supplementary Information

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

Executive Order 12778

The Department has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This proposed rule is not a significant regulatory action under Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This proposed 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.*).

Executive Order 12630

The Department has determined that this proposed rule does not have ''significant takings'' implications. The proposed rule does not pertain to ''taking'' of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this proposed rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

Section 286.7 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of the Interior has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Indian tribes and individuals who have received grants must furnish comparative balance sheets and profit and loss statements semiannually for the first two years after the grant and annually for the next three years. There is no BIA form for these statements since industry standards dictate the financial statement requirements. The annual reporting and recordkeeping burden for this collection of information is estimated to average 1 hour for each response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing collection of information. There are 252 grantees who report semiannually and 377 who report annually. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 881 hours. Respondents' hourly rate is similar to a Federal employee GS–9 or $19.25 per hour.

CFR section 286.6	Number of respondents	Frequency of response	Total annual responses	Burden hours per response	Annual burden hours	Cost to respondents	Total cost
Annual	377	1	377	1	377	$7,257	.....
Semiannual	252	2	504	1	504	9,702	$16,959

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the U.S. Department of the Interior.

The Department considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and;

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to the OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Bureau of Indian Affairs on the proposed regulations.

Drafting Information

The primary author of this document is Woody Sneed, Office of Economic Development, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 286

Indians—business and finance.

For the reasons given in the preamble, Part 286 of Title 25, Chapter I, Subchapter N of the Code of Federal Regulations is proposed to be revised as set forth below.

PART 286—INDIAN BUSINESS DEVELOPMENT PROGRAM

Sec.

286.1 Definitions.
286.2 What is the purpose of these regulations?
286.3 Information collection.
286.4 What are the grant limitations and requirements that apply?
286.5 Do I need to return unused funds?
286.6 What reports must I submit?

Authority: 25 U.S.C. 1524.

§ 286.1 Definitions.

As used in this part 286:

Economic enterprise means any profit oriented Indian-owned, commercial, industrial, agricultural, or business activity which must be at least 51 per cent Indian owned.

Grantee means the recipient of a nonreimbursable grant under this part.

Indian means a member of a Federally recognized Indian or Alaska Native tribe or village who is eligible for assistance from the Bureau of Indian Affairs.

Reservation means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by an incorporated Alaska Native group, regional corporation, or village corporation under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Tribe means any Indian tribe, band, nation, rancheria, pueblo, colony, or community. It includes any Alaska Native village or any regional, village, urban, or group corporation—as defined in the Alaska Native Claims Settlement

Act (85 Stat. 688) and recognized by the federal government as eligible for services from the Bureau of Indian Affairs.

We, us, or our mean the Secretary of the Interior or the official in the Bureau of Indian Affairs to whom the Secretary has delegated authority.

§ 286.2 What is the purpose of these regulations?

This part prescribes regulations and procedures pertaining to the Indian Business Development Program which has provided grants to further economic development on Indian reservations. It gives requirements you must follow on reporting the status of grants and complying with grant conditions. It also establishes the circumstances under which you must return grant funds.

§ 286.3 Information collection.

(a) The Office of Management and Budget has approved our collection of information under 44 U.S.C. 3501 *et seq.* under clearance number 1076–0093. The collection of information helps the BIA to provide assistance to failing businesses funded with grants and to compile reports on the program's effectiveness.

(b) We estimate the public reporting for this information to average 1 hour 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. These may be copies of financial statements required by and furnished to the lender which provided the loan portion of the total financing required. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Director of Management and Administration, Bureau of Indian Affairs, 1849 C Street, NW., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1076–0093), Washington, DC 20503.

§ 286.4 What are the grant limitations and requirements that apply?

An Indian tribe cannot receive over $250,000 in grants from this program. The total of grants to an individual or any other non-tribal business entity cannot exceed $100,000. Grantees must have obtained at least 75 percent of the necessary financing from sources other than the direct and guaranteed loan programs.

§ 286.5 Do I need to return unused funds?

(a) You must return all or a portion of the funds in the following circumstances:

You Must Return the Entire Grant if, Within 3 Years of the Grant

You sell the business which received the grant and did not reinvest the proceeds, with our approval, in a new business which contributes to the reservation economy.

You move the business off the reservation and it no longer contributes to the reservation economy.

Indian ownership and/or active management falls below 51 percent.

If a cooperative association, profits are not allocated for later distribution to members.

(b) When do I need to return unused funds? We require you to return unused grant funds if you do not initiate the economic enterprise within the time stated in your grant agreement. Grant funds owed will be deemed debt owed to the United States. The following table indicates circumstances in which you must return funds.

You Must Return Unused Funds if You Did Not Initiate Your Grant Through These Types of Actions

You have not obtained a lease if you needed to do this for your enterprise.

You have not started construction, if that was necessary.

You have not purchased equipment or other materials needed for the enterprise.

You have not performed other actions which were necessary to initiate the enterprise.

(c) Can I obtain an extension of time to allow me to start my enterprise? If we determine that circumstances exist beyond your control we may extend the time we allow you to initiate the enterprise. No program may be initiated and no funding may be disbursed after September 30, 1997.

(d) What additional information do I need to provide for an extension? You must provide assurance that you will initiate the enterprise within the extended time period. We will write to the lender regarding any actions which we propose requiring you to return grant funds or of any proposal to extend the time.

§ 286.6 What reports must I submit?

(a) After receiving a grant, you must furnish us the following information:

You must submit	Semiannually during	And annually during
comparative balance sheets.	the first two years of operation.	years three through five of operation.
profit and loss statements.	the first two years of operation.	years three through five of operation.

(b) You may use copies of financial statements which you furnish to the lender who provides partial financing.

(c) If you fail to provide the necessary reports, we will require repayment of grant funds. Grant funds owed will be deemed debt owed to the United States.

Dated: January 10, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–2316 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–22–P

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR–027–FOR]

Arkansas Regulatory Program and Abandoned Mine Land Reclamation Plan

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Arkansas regulatory program and abandoned mine land reclamation plan (hereinafter referred to as the ''Arkansas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Arkansas' proposed amendment pertain to the definition for ''unanticipated event or condition''; procedures for challenging ownership and control links shown in AVS; and applicant liability under the Small Operator Assistance Program. Arkansas also proposed to correct typographical errors and a number of incorrect reference citations. The amendment is intended to incorporate the additional flexibility afforded by the revised Federal regulations and to enhance the enforcement of the State program.

DATES: Written comments must be received by 4:00 p.m., c.s.t., February 14, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to A. Dwight Thomas, Acting Director, Tulsa Field Office at the address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

A. Dwight Thomas, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Arkansas Department of Pollution Control and Ecology, Surface Mining and Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72219–8913, Telephone (501) 682–0744.

FOR FURTHER INFORMATION CONTACT:

A. Dwight Thomas, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program
II. Discussion of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. Background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the November 21, 1980, Federal Register (45 FR 77003). Arkansas amended its program by submitting provisions that satisfied all of the conditions of the Secretary's approval of November 21, 1980. Effective January 22, 1982, OSM removed the conditions of the approval of the Arkansas permanent regulatory program. Information on the removal of the conditions can be found in the January 22, 1982, Federal Register (47 FR 3108). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 904.12, 904.15, and 904.16.

II. Discussion of the Proposed Amendment

By letter dated April 2, 1996 (Administrative Record No. AR–557), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted the proposed amendment at its own initiative. The provisions of the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) that Arkansas proposes to amend are: ASCMRC Section 700.10(b), Termination of Jurisdiction; ASCMRC Section 701.5, Definitions for ''drinking, domestic or residential water supply,'' ''land eligible for remining,'' ''material damage,'' ''non-commercial building,'' ''occupied residential dwelling and structures related thereto,'' ''previously mined area,'' ''replacement of water supply,'' and ''unanticipated event or condition''; ASCMRC Section 761.12(h), Procedures; ASCMRC Section 771.25(b), Permit Fees; ASCMRC Section 778.14(c), Compliance Information; ASCMRC Section 778.18, Personal Injury and Property Insurance Information; ASCMRC Section 779.19(b), Vegetation Information; ASCMRC Section 779.22, Land Use Information; ASCMRC Section 779.25(k), Cross-sections, Maps, and Plans; ASCMRC Section 780.21 and 784.14, Hydrologic Information; ASCMRC Section 780.23 and 784.15, Land Use Information; ASCMRC Section 780.25 and 784.16, Ponds, Impoundments, Banks, Dams and Embankments; ASCMRC Section 783.22, Land Use Information; ASCMRC Section 784.20, Subsidence Control; ASCMRC Section 784.25(a), Return of Coal Processing Waste to Abandoned Underground Workings; ASCMRC Section 785.25, Lands Eligible for Remining; ASCMRC Section 786.5(b), Definitions for ''applicant/violator system or AVS,'' ''federal violation notice,'' ''ownership or control link,'' ''state violation notice,'' and ''violation notice''; ASCMRC Section 786.11(c)(2), Public Notices of Filing of Permit Applications; ASCMRC Section 786.17(c), Review of Violations; ASCMRC Section 786.19(g)–(r), Criteria for Permit Approval or Denial; ASCMRC Section 786.30, Improvidently Issued Permits: General Procedures; ASCMRC Section 786.31, Improvidently Issued Permits: Rescission Procedures; ASCMRC Section 786.32, Verification of Ownership or Control Application Information; ASCMRC Section 786.33, Review of Ownership or Control Violation Information; ASCMRC Section 786.34, Procedures for Challenging Ownership or Control Links Shown in AVS; ASCMRC Section 786.35, Standards for Challenging Ownership or Control Links and the Status of Violations; ASCMRC Section 788.14(a)(3), Permit Renewals: Completed Applications; ASCMRC Section 795.12, Program Services; ASCMRC Section 795.13(a)(2), Eligibility for Assistance; ASCMRC Section 795.16, Data Requirements; ASCMRC Section 795.17, Qualified Laboratories; ASCMRC Section 795.19, Applicant Liability; ASCMRC Part 800, General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under the State Program; ASCMRC Section 816.41, Hydrologic Balance Protection; ASCMRC Section 816.46, Hydrologic Balance: Siltation Structures; ASCMRC Section 816.49, Impoundments; ASCMRC Section 816.81, Coal Mine Waste: General Requirements; ASCMRC Section 816.82, Coal Processing Waste Banks: Site Inspection; ASCMRC Section 816.85, Coal Processing Waste Banks: Construction Requirements; ASCMRC Section 816.86, Coal Processing Waste: Burning; ASCMRC Section 816.88, Coal Processing Waste: Return to Underground Workings; ASCMRC Section 816.89, Disposal of Noncoal Mine Wastes; ASCMRC Section 816.91–93, Coal Processing Waste: Dams and Embankments; ASCMRC Section 816.112, Revegetation: Use of Introduced Species; ASCMRC Section 816.116, Revegetation: Standards for Success; ASCMRC Section 816.121–U, Subsidence Control: General Requirements; ASCMRC Section 816.122–U, Subsidence Control: Public Notice; ASCMRC Section 816.124–U, Subsidence Control: Surface Owner Protection; ASCMRC Section 816.126–U, Subsidence Control: Buffer Zones; ASCMRC Section 827.12, Coal Processing Plants: Performance Standards; ASCMRC Section 842.11, Inspections; ASCMRC Section 842.14, Review of Adequacy and Completeness of Inspections; ASCMRC Section 874.5, Definition for ''left or abandoned in either an unreclaimed or inadequately reclaimed condition''; and ASCMRC Section 874.12, Eligible Lands and Water.

OSM announced receipt of the proposed amendment in the May 3, 1996, Federal Register (61 FR 19881) and invited public comment on its adequacy. The public comment period ended June 3, 1996.

During its review of the amendment, OSM identified concerns relating to ASCMRC 701.5, Definition for ''unanticipated event or condition''; ASCMRC 786.34, Procedures for Challenging Ownership or Control Links Shown in AVS; ASCMRC 816.49, Impoundments; ASCMRC 795.19, Applicant Liability under the Small Operator Assistance Program; typographical errors; and a number of incorrect reference citations. OSM notified Arkansas of the concerns by E-

mail dated October 22, 1996 (Administrative Record No. AR–557.07). Arkansas responded in a letter dated December 9, 1996 (Administrative Record No. AR–557.06), and a facsimile (fax) dated January 7, 1997 (Administrative Record No. AR–557.08), by submitting a revised agreement.

Specifically, Arkansas proposes the following:

A. Subchapter A—General

1. ASCMRC Section 701.5 Definitions

Arkansas proposes to correct a reference citation for the definition of ''unanticipated event or condition.''

B. Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems

1. ASCMRC Section 786.33 Review of Ownership and Control Violation Information

Arkansas proposes to correct a reference citation in paragraph (a).

2. ASCMRC Section 786.34 Procedures for Challenging Ownership and Control Links Shown in AVS

Arkansas proposes to correct reference citations in paragraphs (a)(1) and (a)(3), and to revise paragraphs (b) through (d) regarding procedures an applicant or other person must follow in order to challenge the status of a State violation.

C. Subchapter H—Small Operator Assistance

1. ASCMRC Section 795.19 Applicant Liability

Arkansas proposes to amend paragraph (a) by deleting the term ''laboratory'' thereby making applicants liable for all services allowed under the Small Operator Assistance Program and not just those relating to laboratory service.

D. Subchapter K—State Program Performance Standards

1. ASCMRC Section 816.49 Impoundments

Arkansas proposes to amend this section by redesignating existing paragraphs (a)(1) through (a)(8) as paragraphs (a)(2) through (a)(9), respectively, and by redesignating existing paragraphs (a)(9) through (a)(11) as paragraphs (a)(11) through (a)(13), respectively; by adding new paragraphs (a)(1) and (a)(10); by revising newly redesignated paragraphs (a)(2), (a)(4), (a)(5), (a)(6)(i), (a)(9), and (a)(12); and by inserting references to the SCS criteria for dam classification.

E. Subchapter R—Abandoned Mine Land Reclamation

1. ASCMRC Section 874.12 Eligible Lands and Water

Arkansas proposes to delete the incorrect reference citations in paragraphs (a)(5) and (a)(8) and replace them with appropriate reference citations.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Arkansas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 17, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97–2331 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 920

[MD–041–FOR]

Maryland Regulatory Program

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 receipt of proposed amendments to the Maryland regulatory program (hereinafter the ''Maryland program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments consist of revisions to the Maryland regulations pertaining to excess spoil disposal, conditions of surety and collateral bonds, and procedures for release of general bonds. The amendments are intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., E.S.T., March 3, 1997. If requested, a public hearing on the proposed amendment will be held on February 24, 1997. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T., on February 14, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220, Telephone: (412) 937–2153

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689–4136

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2932.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 18, 1982, Federal Register (47 FR 7214). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.15 and 920.16.

II. Description of the Proposed Amendment

Maryland provided an informal amendment to OSM regarding excess spoils on March 11, 1994. OSM completed its reviews of the informal amendment and requested a formal proposal from Maryland in a letter dated August 6, 1996. By letter dated January 7, 1997 (Administrative Record No. MD–576–00), Maryland submitted a proposed amendment to its program pursuant to SMCRA at OSM's request.

Additionally, by letter dated January 14, 1997 (Administrative Record No. MD–552–13), Maryland submitted proposed amendments to its program pursuant to SMCRA. These amendments pertain to conditions of surety and collateral bonds, and procedures for release of general bonds and are intended to comply with required program amendments identified in 30 CFR 920.16 (k) and (m).

The provisions of the Code of Maryland Regulations (COMAR) that Maryland proposes to amend are as follows:

1. COMAR 26.20.26, Excess Spoil Disposal

Specifically, Maryland proposes to add new regulation .05 entitled ''Placement of Excess Spoil on Abandoned Mine Land'' to Chapter 26, Excess Spoil Disposal as follows:

a. New subparagraph A and items (1) through (5) state that excess spoil from a permitted coal mining operation may be placed on abandoned mine land outside of the permit area if the Department determines that the abandoned mine land is eligible for funding under Environment Article, Title 15, Subtitle 11, Annotated Code of Maryland; the abandoned mine land is referenced in the permit application and identified on the permit map; the plan for the placement of such spoil meets the design requirements of Maryland's approval program; the legal right to enter upon the abandoned mine land and to place excess spoil on the area has been obtained from the surface owner; and the excess spoil will be placed in accordance with the provisions of a contract executed between the Department and the permitee for reclamation of the abandoned mine land.

b. New subparagraph B, entitled ''Reclamation Standards'', and items (1) through (4), are added to require that excess spoil beyond the amount required to restore the abandoned mine land to its original contour may not be placed on the abandoned mine land; the final configuration of the excess spoil that is placed on the abandoned mine land area outside of the permit area shall be compatible with the natural surroundings and be suitable for the intended land use; valley, head of hollow, or durable rock fills may not be constructed on abandoned mine land; and placement of excess spoil from a permit area on abandoned mine land shall be planned and implemented in accordance with the requirements of Maryland's approved program.

c. New subparagraph C and items (1) through (5) provide that placement of excess spoil from a permit area on abandoned mine land outside of a permit area may not be approved unless the Department finds in writing, on the basis of information set forth in the plan or otherwise available, that: placement of the excess spoil and reclamation of the abandoned mine land can be feasibly accomplished in accordance with the plan submitted by the operator; the excess spoil placement operation has been designed to prevent damage to the hydrologic balance outside of the abandoned mine land; the excess spoil placement operation will not adversely affect any publicly owned parks or places included in the National Register of Historic Places, unless approved by the appropriate jurisdictional agency; the applicant has submitted documentation establishing a legal right to enter and conduct the proposed reclamation on the abandoned mine land; and the proposed activities will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act.

d. New subparagraph D and items (1) through (3) state that placement of excess spoil from a permitted coal mining operation on abandoned mine land outside of the permit area shall be accomplished in accordance with a contract between the Department and the permittee that contains conditions that document the method of placement

of the excess spoil and reclamation on the area; require the operator to permit and bond the abandoned mine land area in the event the operator defaults on the contract; and authorize the Department to issue a cessation order to cease all mining operations on the adjacent permit area until the operator submits an application for a permit and the required amount of bond for the abandoned mine land area in the event the operator defaults on the contract.

e. New subparagraph E is added to state that the Department will monitor the placement of the excess spoil and the reclamation of the abandoned mine land area to ensure that the work is performed in accordance with the contract. In the event the operator fails to meet the terms of the contract, the Department shall issue a cessation order to stop the work on the area until the failure has been corrected.

2. COMAR 26.20.14.06, Conditions of Bonds

a. Subparagraph (B)(3) is amended to state that certificates of deposit be made payable to the Bureau. This paragraph formerly stated that such certificates of deposit shall be assigned to the Bureau in writing and upon the books of the bank issuing these certificates.

b. Subparagraph (B)(4) is amended by changing the denomination amount from $40,000 to $100,000.

c. New subparagraph (8) is added to require that the bank give prompt notice to the Bureau and the permittee of any notice received or action filed alleging insolvency or bankruptcy of the bank or the permittee, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business.

3. COMAR 26.20.14.09, Procedures for Release of General Bonds

a. Subparagraph (B)(2)(b) is revised by substituting the word ''identify'' for ''show'' and by adding the requirement to identify the approval date of the permit.

b. Subparagraph (B)(2) (c) and (d) are revised by submitting the word ''identify'' for ''show'' and (d) is further revised by adding the requirement to identify the type and amount of bond filed on the permit.

c. Subparagraph (B)(2)(e) is revised by requiring that the type and approximate dates of the work performed be summarized.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center 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.S.T. on February 14, 1997. 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 who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

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**.

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 amendment 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 12988

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. In making the determinations as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 920

Intergovernmetnal relations, Surface mining, Underground mining.

Dated: January 24, 1997.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–2332 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–05–M

---

30 CFR Part 938

[PA–117–FOR]

Pennsylvania Regulatory Program

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 Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment (Administrative Record Number PA 843.00) revises the Pennsylvania program to incorporate changes made to Chapter 86 (relating to areas unsuitable for mining) by the Pennsylvania Environmental Quality Board. The proposed amendment is intended to clarify ambiguous language contained in Subchapter D concerning the designation of areas as unsuitable for mining, and to correct typographical errors.

DATES: Written comments must be received by 4 p.m., e.s.t. March 3, 1997. If requested, a public hearing on the proposed amendment will be held on February 24, 1997. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t. on February 14, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address shown below.

Copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Harrisburg Field Office. 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**.

Robert J. Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation, Room 209 Executive House, 2nd and Chestnut Streets, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103.

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

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background information on the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, Federal Register (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Discussion of Amendment

By letter dated December 19, 1996 (Administrative Record Number PA 843.00), Pennsylvania submitted amendments to the regulations in the Pennsylvania program concerning designating areas unsuitable for coal surface mining. The amendments are intended to clarify ambiguous language contained in Subchapter D concerning the designation of areas as unsuitable for mining, and to correct typographical errors.

The proposed amendments are as follows:

At § 86.101, in the definition of ''fragile lands'' two citations of the State Surface Mining Conservation and Reclamation Act are being amended.

At § 86.101, in the definition of ''surface mining activities'' the term that is being defined, ''surface mining activities'' is being changed to read ''surface mining operations.''

In various places, the term ''surface mining activities'' and ''surface mining activity'' are being amended to read ''surface mining operations'' and ''surface mining operation,'' respectively.

In various places the word ''surface'' is being added to clarify that the term ''surface mining operations'' is intended.

In various places the word ''activities'' is being replaced by the phrase ''surface mining operations.''

At § 86.121(a) the citation for the State Surface Mining Conservation and Reclamation Act is being amended.

At § 86.130 (a) and (b), the word ''all or certain types of'' are being added to clarify that § 86.130 pertains to areas designated as unsuitable for all or certain types of surface mining operations.

Various other typographical, grammatical, style, and organizational name changes are being made throughout the amendment.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Pennsylvania satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg 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 p.m., e.s.t. on February 14, 1997.

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 wish to do so, will be heard following those who have been 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 amendment 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 12988

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

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 corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 15, 1997.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–2330 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA014–7195b; FRL–5682–1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts: Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim rule.

SUMMARY: EPA is proposing a conditional interim approval and in the alternative, disapproval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts on March 27, 1996. This submittal is a supplement to the original enhanced inspection and maintenance submittal by the Commonwealth of Massachusetts on December 23, 1994. This revision establishes and requires the implementation of a statewide enhanced inspection and maintenance (I/M) program. EPA is proposing a conditional approval because the Commonwealth's SIP revision is deficient with respect to several requirements of the CAA and/or EPA's I/M program regulatory requirements.

DATES: Comments must be received on or before March 3, 1997.

ADDRESSES: Comments may be mailed to Susan E. Studlien, Deputy Director, Office of Ecosystem Protection (CAA), United States Environmental Protection Agency, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the U.S. EPA, One Congress Street, Boston MA 02203.

FOR FURTHER INFORMATION CONTACT: Peter X. Hagerty, (617) 565–3571.

I. Background

A. Impact of the National Highway System Designation Act on the Design and Implementation of Enhanced Inspection and Maintenance Programs Under the Clean Air Act

The National Highway System Designation Act of 1995 (NHSDA) establishes two key changes to the enhanced I/M rule requirements previously developed by EPA. Under the NHSDA, EPA cannot require states to adopt or implement centralized, test-only IM240 enhanced vehicle inspection and maintenance programs as a means of compliance with section 182, 184 or 187 of the CAA. Also under

the NHSDA, EPA cannot disapprove a state SIP revision, nor apply an automatic discount to a state SIP revision under section 182, 184 or 187 of the CAA, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called ''50% credit discount'' that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, and herein referred to as the I/M Rule) has been effectively replaced with presumptive equivalency criteria which place the emission reductions credits for decentralized networks on a par with credit assumptions for centralized networks, based upon a state's good faith estimate of reductions as provided by the NHSDA and explained below in this section.

EPA's I/M Rule established many other criteria unrelated to network design or test type for states to use in designing enhanced I/M programs. All other elements of the I/M Rule, and the statutory requirements established in the CAA continue to be required of those states submitting I/M SIP revisions under the NHSDA, and the NHSDA specifically requires that these submittals must otherwise comply in all respects with the I/M Rule and the CAA.

The NHSDA also requires states to swiftly develop, submit, and begin implementation of these enhanced I/M programs since the anticipated start-up dates developed under the CAA and EPA's rules have already been delayed. In requiring states to submit these plans within 120 days of the NHSDA passage, and in allowing these states to submit proposed regulations for this plan (which can be finalized and submitted to EPA during the interim period) it is clear that Congress intended for states to begin testing vehicles as soon as practicable, now that the decentralized credit issue has been clarified and directly addressed by the NHSDA.

Submission criteria described under the NHSDA allow for a state to submit proposed regulations for this interim program, provided that the state has all of the statutory authority necessary to carry out the program. Also, in proposing the interim credits for this program, states are required to make good faith estimates regarding the performance of their enhanced I/M program. Since these estimates are expected to be difficult to quantify, the state need only provide that the proposed credits claimed for the submission have a basis in fact. A good faith estimate of a state's program may be an estimate that is based on any of the following: the performance of any previous I/M program; the results of remote sensing or other roadside testing techniques; fleet and vehicle miles traveled (VMT) profiles; demographic studies; or other evidence which has relevance to the effectiveness or emissions reducing capabilities of an I/M program.

This action is being taken under the authority of both the NHSDA and section 110 of the CAA. Section 348 of the NHSDA expressly directs EPA to issue this interim approval for a period of 18 months, at which time the interim program will be evaluated in concert with the appropriate state agencies and EPA. At that time, the Conference Report on section 348 of the NHSDA states that it is expected that the proposed credits claimed by the state in its submittal, and the emissions reductions demonstrated through the program data may not match exactly. Therefore, the Conference Report suggests that EPA use the program data to appropriately adjust these credits on a program basis as demonstrated by the program data.

Furthermore, EPA believes that in taking action under section 110 of the CAA, it is appropriate to grant a conditional approval to this submittal since there are some deficiencies with respect to CAA statutory and regulatory requirements (identified herein) that EPA believes can be corrected by the state during the interim period.

B. Interim Approvals Under the NHSDA

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under this Act. This Act also directs EPA and the states to review the interim program results at the end of 18 months, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort to reflect the emissions reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for these programs to start-up as soon as possible, which EPA believes should be on or before November 15, 1997, so that sufficient operational program data can be collected to evaluate the interim program. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, that Congress recognized and attempted to mitigate any further delay with the start-up of this program. For the purposes of this program, ''start-up'' is defined as a fully operational program which has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of a state's required areas. EPA proposes that if the state fails to start its program on schedule, the approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the state.

The program evaluation to be used by the state during the 18 month interim period must be acceptable to EPA. EPA anticipates that such a program evaluation process will be developed by the Environmental Council of States (ECOS) group that is convening now and that was organized for this purpose. EPA further anticipates that in addition to the interim, short term evaluation, the state will conduct a long term, ongoing evaluation of the I/M program as required by the I/M Rule in §§ 51.353 and 51.366.

C. Process for Full Approvals of This Program Under the CAA

As per the NHSDA requirements, this interim rulemaking will expire within 18 months of the final interim approval, or the date of final full approval. A full approval of the state's final I/M SIP revision (which will include the state's program evaluation and final adopted state regulations) is still necessary under section 110 and under section 182, 184 or 187 of the CAA. After EPA reviews the state's submitted program evaluation, final rulemaking on the state's full SIP revision will occur.

II. EPA's Analysis of Massachusetts's Submittal

On March 27, 1996, Massachusetts Department of Environmental Protection (DEP) submitted a revision to its State Implementation Plan (SIP) for an enhanced I/M program to qualify under the NHSDA. The revision consists of enabling legislation that will allow the Commonwealth to implement the I/M program, proposed regulations, a description of the I/M program (including a modeling analysis and detailed description of program features), and a good faith estimate that includes the Commonwealth's basis in fact for emission reductions claims of the program. The Commonwealth's credit assumptions were based upon the removal of the 50% credit discount for all portions of the program that are based on a test-and-repair network, and the application of the Commonwealth's own estimate of the effectiveness of its hybrid test-and-repair program. The State has submitted three supplemental letters to EPA on September 17, 1996,

November 21, 1996 and November 27, 1996.

A. Analysis of the NHSDA Submittal Criteria

Transmittal Letter

On March 27, 1996, Massachusetts submitted an enhanced I/M SIP revision to EPA, requesting action under the NHSDA of 1995 and the CAA of 1990. The official submittal was made by the appropriate Commonwealth official, Mr. David Struhs, Commissioner of the Department of Environmental Protection, and was addressed to John DeVillars, Regional Administrator, the appropriate EPA official in the Region.

Enabling Legislation

The Commonwealth of Massachusetts has legislation, at M.G.L.c.21A and M.G.L.c.111. paragraph 142A–D, 142J, and 142M, enabling the implementation of an enhanced IM program.

Proposed Regulations

On March 27, 1996, the Commonwealth of Massachusetts proposed regulations in accordance with 40 CFR Part 51, establishing an enhanced I/M program. The regulations call for implementation of a hybrid enhanced I/M program starting in 1997, with the installation of new emission analyzers connected to a central computer and installation of dynamometers in 1999, with final cut points being implemented in 2001. The Commonwealth did not specify when the regulations will be adopted. Since in a letter dated September 17, 1996, Massachusetts has committed to start a full enhanced I/M program with dynamometer testing by November 15, 1997 or by January 1998 at the latest, then EPA can propose interim, conditional approval of the proposed Commonwealth regulations. These regulations must be adopted by the Commonwealth and submitted to EPA before final full approval of the I/M program.

Program Description

The program calls for biennial transient testing in either test-only or test-and-repair facilities. The test equipment will be either IG240 or RG240 connected to a contractor operated central computer. The program evaluation year is 2002. Massachusetts will have a systems contractor operating the central computer network. This contractor will have the ability to disconnect facilities which are conducting improper testing. The Commonwealth believes that having numerous dynamometers in the field in test-and-repair facilities available for diagnostic work and repair confirmation will significantly improve the quality of repairs and emission reductions from the program.

Emission Reduction Claim and Basis for the Claim

Massachusetts will rely heavily on a systems contractor to run the central computer system, monitor all emission testing facilities, and take action to correct problems. Massachusetts will start transient emission testing by November 15, 1997, or by January 1998, at the latest, with a two year inspection cycle. Massachusetts is claiming full IM240 credit for an IG240 or RG240 program, which is not consistent with EPA policy as stated in an August 18, 1994, memo on this subject. Massachusetts has not submitted any other basis in fact such as data from another program for the credit claim. EPA allows the use of a 96% compliance rate for a well run enforcement program, while Massachusetts claims a 98% compliance rate without any additional measures to justify this higher rate. The Commonwealth has recently revised the estimated compliance rate to 96%. Massachusetts will not issue any waivers but will allow ''grace periods'' of unspecified length. The length of these ''grace periods'' must be defined and the emission reduction losses included in the emission reduction calculations. This has been clarified in a letter dated November 27, 1996, from the Commonwealth which stated ''We will incorporate these modeling changes into the revised 15% plan''. We expect future submittals from the Commonwealth will incorporate these assumptions. EPA guidance provides for 100% credit for mechanic training if the state makes provisions to ensure that only trained mechanics repair failed vehicles. Massachusetts has assumed 100% mechanic training credit. However, under the proposed program, although the Commonwealth will be providing a mechanic training program, no requirement exists to ensure vehicle owners obtain vehicle repairs by trained technicians.

B. Analysis of the EPA I/M Regulation and CAA Requirements

As previously stated, the NHSDA left those elements of the I/M Rule that do not pertain to network design or test type intact. Based upon EPA's review of Massachusetts' submittal, EPA believes the Commonwealth has not complied with all aspects of the NHSDA, the CAA and the I/M Rule. For those sections of the I/M rule or of the CAA identified below with which the Commonwealth has not yet fully complied, EPA proposes to conditionally approve the SIP if the Commonwealth commits within 30 days of publication of this document to correct said deficiencies by a date (or dates) certain within 1 year of EPA interim approval.

The Commonwealth must correct these major deficiencies by the date specified in the commitment or this conditional approval will convert to a final disapproval under CAA section 110(k)(4). EPA has also identified certain minor deficiencies in the SIP, which are itemized below. EPA has determined that delayed correction of these minor deficiencies will have a de minimis impact on the Commonwealth's ability to meet clean air goals. Therefore, the state need not commit to correct those deficiencies in the short term and EPA will not impose conditions on interim approval with respect to these deficiencies. The Commonwealth must correct these deficiencies during the 18 month term of the interim approval, as part of the fully adopted rules that the Commonwealth will submit to support full approval of its I/M SIP. As long as the Commonwealth corrects the minor deficiencies prior to final action on the Commonwealth's full I/M SIP, EPA concludes that failure to correct the deficiencies in the short term is de minimis and will not adversely affect EPA's ability to give interim approval to the proposed I/M program.

Applicability—40 CFR 51.350

Sections 182(c)(3) and 184(b)(1)(A) of the Act and 40 CFR 51.350(a) require all states in the Ozone Transport Region (OTR) which contain Metropolitan Statistical Areas (MSAs) or parts thereof with a population of 100,000 or more to implement an enhanced I/M program. Massachusetts is part of the OTR and contains the following MSAs or parts thereof with a population of 100,000 or more: Boston-Lawrence-Salem, MA-NH CMSA, Providence-Pawtucket-Fall River, RI–MA CMSA, New Bedford, MSA, Springfield, MSA and Worcester, MSA.

Massachusetts is classified as a serious ozone nonattainment area statewide and is required to implement an enhanced I/M program per section 182(c)(3) of the CAA and 40 CFR 51.350(a)(2). In addition, the Boston area CO maintenance plan includes basic I/M as a control strategy.

Under the requirements of the Clean Air Act, all counties in Massachusetts would be subject to I/M program requirements. The proposed Massachusetts I/M regulation requires that the enhanced I/M program be

implemented statewide. As stated in the State submittal, the Massachusetts I/M legislative authority in M.G.L.c.21A, and M.G.L.c.111, paragraphs 142A–D, 142J and 142M provide the legal authority to establish a statewide enhanced program. EPA finds that the geographic applicability requirements are satisfied. The federal I/M rule requires that the state program not terminate until it is no longer necessary. EPA interprets the federal rule as stating that a SIP which does not sunset prior to the attainment deadline for each applicable area satisfies this requirement. The Massachusetts submittal does not address the length of time the program will be in effect. The program must continue past the attainment dates for all applicable nonattainment areas in Massachusetts. In the absence of a sunset date, EPA interprets the SIP submittal as requiring the I/M program to continue indefinitely, and proposes to approve the program on this basis. Once approved this unlimited term of the program will be federally enforceable as a requirement of the SIP.

Enhanced I/M Performance Standard—40 CFR 51.351

The enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle age mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the Massachusetts submittal the most current version was MOBILE5h. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both NO_X and HC. In the case of carbon monoxide areas, the performance standard must be met for CO. This Massachusetts submittal must meet the enhanced I/M performance standard for HC and NO_X statewide and meet the basic standard for CO in the Boston CO maintenance area.

The Massachusetts submittal includes the following program design parameters:

Network type—Hybrid (test only credit claim)
Start date—1999
Test frequency—biennial
Model year/ vehicle type coverage—1981+, light and heavy duty, gasoline
Exhaust emission test type—transient
Emission standards—0.8 HC, 15.0 CO, 2.0 NO_X
Emission control device check—yes
Evaporative system function checks—81+
Stringency (pre-1981 failure rate)—N/A
Waiver rate—0
Compliance rate—98%
Evaluation date(s)—2002

Massachusetts has submitted modeling demonstrations using the EPA computer model MOBILE5h showing that the enhanced performance standard reductions will be met in 2002. This demonstration assumed a 98% compliance rate, 0% waiver rate, and IM 240 credits for an IG240 program. EPA questions the use of the 98% compliance rate given the lack of an adequate description of the motorist compliance enforcement system. EPA believes that a 96% compliance rate is achievable for a well operated program, but rates in excess of these require additional measures which go beyond normal enforcement and quality control measures. The Commonwealth has assumed a 0% waiver rate but did not estimate the impact of the proposed ''grace periods'' which will impact emissions. The modeling assumed IM240 credits when IG240 or RG240 will be used. This is inconsistent with the EPA policy specified in a memo dated August 18, 1994, as well as the ECOS recommendations dated October 4, 1996 which specify that ASM2 credits should be used for IG240 or RG240 programs.

EPA and the Commonwealth have been working to resolve these differences since submittal of the SIP package. In a letter dated September 17, 1996, Massachusetts committed to adjust the start date of dynamometer testing to be consistent with other NHSDA state programs. Since it was not clear from this letter on what date the program would start, EPA wrote back on October 7, 1996 to confirm the states intent that the program would start sometime in late 1997, but no later than January 1998. In another letter dated November 27, 1996, Massachusetts agreed to use a 96% compliance rate and 1% waiver rate for modeling purposes. The 1% waiver rate was supported by a description of a program which would not allow any waivers, but would allow ''time extensions'' only for marginal emitters and only after repairs which result in a 50% reduction in emissions, costing up to $300 have been done. These revised estimates are acceptable to EPA.

The Commonwealth has not revised the estimate for mechanic training and believes that there will be a large number of dynamometers in the Massachusetts repair network because of the hybrid system and these dynamometers can be utilized for diagnosis of emission failures and repair confirmation.

They also believe that there will be an extensive training network provided for mechanics. The Commonwealth insists that this will provide as much emission reduction as EPA's estimated reduction for mechanic training. Since EPA has no conflicting data to refute the Commonwealth's claim at this time, it will be considered a minor issue which must be resolved before final approval of the program. EPA is studying the technician training credit available, and expects to have further guidance available prior to final full approval of the program.

EPA and Massachusetts have not been able to agree on the appropriate emission reduction credit for the IG240 or RG240 test which the Commonwealth will use. This is a major deficiency. The Commonwealth claims 100% of the credit for an IM240 test without submitting any supporting data (basis in fact). In addition, Massachusetts intends to phase in the pass/fail standards so that those used during the initial cycles will not be as stringent as those the program will eventually use. Preliminary calculations done by the Commonwealth for a revised 15% plan indicate that the Commonwealth could achieve the needed 15% reduction but not the high enhanced standard utilizing the ASM2 credits recommended by EPA for IG240 and RG240 programs. The Commonwealth will be able to show that the program at least meets the ''low enhanced I/M performance standard.'' If the Commonwealth's final program analysis indicates that use of these standards will not generate the emission reductions needed to allow the State to meet the goals of its 15% plan, Massachusetts will be required to redesign the I/M program to provide additional reductions, or implement other control strategies to reach 15%. The state is not eligible to use the low enhanced performance standard unless

it can meet 15% without the high enhanced standard.

EPA is proposing conditional interim approval of the Massachusetts program at this time consistent with the intent of the NHSDA that state I/M programs be promptly approved and implemented for an 18-month period. EPA proposes that this approval be conditioned upon the requirement that the Commonwealth perform and submit the necessary modeling and demonstration that the program will meet at a minimum the ''low enhanced'' performance standard and 15% plan requirements using MOBILE modeling input consistent with EPA guidance. This demonstration must show as a worst case analysis that the Commonwealth will achieve a 15% reduction if the program only achieves reductions equivalent to ASM2 credit or otherwise reduce the credit claimed by the State for I/M. EPA proposes that the I/M modeling and complete 15% plan revised SIP, be submitted by April 1, 1997. If the State fails to submit a complete 15% plan by April 1, 1997, EPA proposes that the conditional interim approval convert to a disapproval upon a finding letter from EPA indicating that the Commonwealth has failed to submit the modeling and demonstration of compliance with the performance standard by the required date.

If the Commonwealth cannot meet the high enhanced I/M performance standard, the Commonwealth may demonstrate compliance with the low enhanced performance standard established in 40 CFR 51.351(g). That section provides that states may select the low enhanced performance standard if they have an approved SIP for reasonable further progress in 1996, commonly known as a 15 percent reduction SIP or 15 percent plan. In fact, EPA approval of 15 percent plans has been delayed, and although EPA is preparing to take action on 15 percent plans in the near future, it is unlikely that EPA will have completed final action on most 15 percent plans prior to the time EPA believes it would be appropriate to give final or conditional interim approval to I/M programs under the NHSDA. Massachusetts is currently reassessing its 15 percent plan to include the above described I/M program changes. This reassessment is to be based on the current program design and its emission reduction benefit as of November 1999. If the results indicate that the Commonwealth will not achieve a 15 percent reduction in emissions, Massachusetts may choose to either make I/M program improvements that would allow the program to meet the enhanced I/M performance standard or add other provisions to its overall 15% control plan.

In enacting the NHSDA, Congress evidenced an intent to have states promptly implement I/M programs under interim approval status to gather the data necessary to support state claims of appropriate credit for alternative network design systems. By providing that such programs must be submitted within a four month period, that EPA could approve I/M programs on an interim basis based only upon proposed regulations, and that such approvals would last only for an 18 month period, it is clear that Congress anticipated both that these programs would start quickly and that EPA would act quickly to give them interim approval.

Many states have designed a program to meet the low enhanced performance standard, and have included that program in their 15 percent plan submitted to EPA for approval. Such states anticipated that EPA would propose approval both of the I/M programs and the 15 percent plans on a similar schedule, and thus that the I/M programs would qualify for approval under the low performance standard. In light of delays in EPA action on 15 percent plans, EPA does not believe it would be consistent with the intent of the NHSDA to delay action on interim I/M approvals until the Agency has completed action on the corresponding 15 percent plans. Although EPA acknowledges that under its regulations final full approval of a low enhanced I/M program after the 18-month evaluation period would have to await final approval of the corresponding 15 percent plan, EPA believes that in light of the NHSDA it can grant either final or conditional interim approval of such I/M plans provided that the Agency has determined as an initial matter that approval of the 15 percent plan is appropriate, and has issued a proposed approval of that 15 percent plan.

The Commonwealth plans to submit a revised 15 percent plan. It is possible that Massachusetts' proposed I/M program may fall short of the enhanced I/M high performance standard but exceed the low enhanced performance standard. If this is the case and the emission reductions provided by the I/M program allow the Commonwealth to fulfill the requirements of its 15 percent plan, then EPA will review the 15 percent plan and propose action on it shortly thereafter. Should EPA propose approval of the 15 percent plan, EPA will proceed to take conditional interim approval action on the I/M plan. EPA proposes in the alternative that if the Agency proposes instead to disapprove the 15 percent plan, EPA would then disapprove the I/M plan as well because the Commonwealth would no longer be eligible to select the low enhanced performance standard under the terms of 40 CFR 51.351(g).

Network Type and Program Evaluation—40 CFR 51.353

The enhanced program shall include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the Act and the federal I/M regulation. The SIP shall include details on the program evaluation and shall include a schedule for submittal of biennial evaluation reports, data from a state monitored or administered and EPA approved mass emission transient test of at least 0.1% of the vehicles subject to inspection each year, description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program. In order to determine whether the state's I/M program meets the applicable standard, the state needed to submit modeling of its program to reflect that it met the applicable performance standard. Because of delayed program start up and program reconfiguration, the existing modeling used by the state to demonstrate compliance with the performance standard is no longer accurate, as it is based on start up and phase-in of testing and cut-points that do not reflect the current program configuration or start dates that the state will actually implement. EPA believes, based on the available modeling, analysis of program elements in the SIP submittals and EPA's own extrapolation of expected emission reductions from the program, that the delayed program start up, as compared to that start up which was modeled by the state, will not jeopardize the state's ability to meet the low enhanced performance standard. However, the state must conduct new modeling using the actual program configuration to verify that the performance standard will in fact be met. For example, phase-in cut points corresponding to the test-type and correct program start up dates should be included in the new modeling.

EPA is proposing interim approval of the state program at this time consistent with the intent of the Highway Act that state I/M programs be promptly approved and implemented for an 18 month period. However, EPA proposes that this approval be conditioned upon the requirement that the state conduct and submit the necessary new modeling

and demonstration that the program will meet the performance standard by a date certain within one year from final interim approval. If the state fails to submit this new modeling by a date certain within one year, EPA proposes that the interim approval will convert to a disapproval upon a letter from EPA indicating that the state has failed to timely submit the modeling and demonstration of compliance with the performance standard. In addition, the existing I/M rules require that the modeling demonstrate that the state program has met the performance standard by fixed evaluation dates. The first such date is January 1, 2000. However, few state programs will be able to demonstrate compliance with the performance standard by that date as a result of delays in program start up and phase in of testing requirements. EPA believes that based on the provisions of the Highway Act, the evaluation dates in the current I/M rule have been superceeded. Congress provided in the Highway Act for state development of I/M programs that would start significantly later than the start dates in the current I/M rule. Consistent with congressional intent, such programs by definition will not achieve full compliance with the performance standard by the beginning of 2000.

As explained above, EPA has concluded that the Highway Act superceeded the start date requirements of the I/M rule, but that states should still be required to start their programs as soon as possible, which EPA has determined would be by November 15, 1997. Therefore, EPA believes that pursuant to the Highway Act, the initial evaluation date should be 2002. This evaluation date will allow states to fully implement their I/M programs and complete one cycle of testing at full cut points in order to demonstrate compliance with the performance standard.

The Commonwealth has designed a hybrid network. Based on the provisions of the NHSDA, there will be no automatic discount applied to the test-and-repair portion for this type of network. The Commonwealth has committed to meet the program evaluation requirements of 40 CFR 51.353 but failed to provide a detailed description of this part of the program in the SIP submission. The Commonwealth must describe in detail how these requirements will be met, including how the program evaluation vehicles will be selected and tested. This minor deficiency must be corrected before final full approval of the Massachusetts I/M SIP.

Adequate Tools and Resources—40 CFR 51.354

The federal regulation requires the state to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if it is demonstrated that the funding can be maintained. Reliance on funding from the state or local General Fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The Commonwealth has provided for a dedicated fund for the program, but there is no analysis of the staff or other resources needed to implement the program. The Commonwealth must submit a detailed evaluation of resource needs and establish a test fee which is adequate to meet these needs. The submittal does not meet the requirements of this section set forth in the federal I/M rule and this is a major deficiency. In the letter dated November 27, 1996 from the Commonwealth, it was stated that the March 27, 1996 and December 1994 submittals addressed these requirements, but neither submittal contains the detailed description required by this section. In addition, the December 1994 submittal was for a test-only program which required significantly different resource allocations from the hybrid now program anticipated by the Commonwealth. The Commonwealth, within 30 days of publication of this document, must commit to correct this deficiency by a date certain within one year of interim conditional approval of this submittal.

Test Frequency and Convenience—40 CFR 51.355

The enhanced I/M performance standard assumes an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The Massachusetts program will provide biennial testing in a hybrid network. Many of the details of this section must still be developed by the Commonwealth before EPA can determine if the requirements are satisfied. Although the Commonwealth expects sufficient testing facilities to participate to provide adequate convenience, there are no provisions to provide additional testing if participation is lower than expected. This is a minor deficiency which must be corrected prior to final full approval of the SIP.

Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds GVWR, and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in the same type of test network as other vehicles in the state, according to the requirements of 40 CFR 51.353(a).

Vehicles which are operated on federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The federal I/M regulation requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the

exemption. Such exemptions shall be accounted for in the emissions reduction analysis.

The Commonwealth program proposes to test 1981 and newer light and heavy duty gasoline vehicles. The Massachusetts submittal does not provide a detailed description of the number and types of vehicles included in the program. This is a minor deficiency which must be corrected prior to final full approval of the Massachusetts I/M SIP.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA documents entitled ''High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications'', EPA–AA–EPSD–IM–93–1, dated April 1994 and ''Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications'', EPA–AA–RSPD–IM–96–2, dated July 1996. The federal I/M regulation also requires vehicles that have been altered from their original certified configuration (i.e. engine or fuel switching) to be subject to the requirements of § 51.357(d).

Massachusetts will use a transient test but the test procedures have not been developed and submitted by the Commonwealth. This portion of the submittal does not meet the requirements of this section set forth in the federal I/M rule and is a major deficiency. The Commonwealth, within 30 days of publication of this document must commit to correct this major deficiency by a date certain within one year of interim conditional approval of this submittal.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The federal I/M regulation requires that the state SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

Although the Massachusetts submittal does not contain the written technical specifications for test equipment to be used in the program it does describe a system which will utilize the latest computerized equipment.

This is a minor deficiency which must be corrected prior to final full approval of the Massachusetts SIP.

Quality Control—40 CFR 51.359

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

The Massachusetts submittal does not include provisions which describe and establish quality control measures for the emission measurement equipment, and record keeping requirements. This portion of the submittal does not meet the requirements of this section set forth in the federal I/M rule and is a major deficiency. The Commonwealth, within 30 days of publication of this document, must commit to correct this deficiency by a date certain within one year of final interim conditional approval of this submittal.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

Massachusetts has chosen not to allow cost waivers or compliance via diagnostic inspection, but will allow a ''grace period'' for repairs. The length of these grace periods needs to be defined in order to evaluate the impact of this proposal. This part of the submittal does not meet the requirements of this section set forth in the federal I/M rule and this is a major deficiency. In a letter dated November 27, the Commonwealth explained that it was now developing a procedure which would not allow waivers, but would allow a ''time extension'' for some marginal failures for one test cycle if $300 is spent on repairs and other conditions are met. This procedure must be further developed and submitted to EPA for approval. The Commonwealth estimates that this program will allow no more than the equivalent of a 1% waiver rate. The Commonwealth, within 30 days of publication of this document, must commit to correct this major deficiency or clarify the procedure by a date certain within one year of interim conditional of this submittal.

Motorist Compliance Enforcement—40 CFR 51.361

The federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. An enhanced I/M area may use either sticker-based enforcement programs or computer-matching programs if either of these programs were used in the existing program, which was operating prior to passage of the 1990 Clean Air Act Amendments, and it can be demonstrated that the alternative has been more effective than registration denial. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, and a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

The Commonwealth is planning on utilizing a sticker system for visible evidence of compliance, but registration will be suspended or not renewed for noncompliance. The initial Massachusetts SIP submittal uses a 98% compliance rate in the performance standard modeling demonstration, however, the Commonwealth has not committed to or described what measures will be used to achieve this higher compliance rate. In a letter dated November 27, 1996, the Commonwealth revised the compliance rate of 96% for modeling purposes. This revised part of the submittal meets the requirements of this section as set forth in the federal I/M rule and is part of the basis for conditional interim approval of the Massachusetts I/M SIP.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

The details of this program have not been developed and submitted in order for EPA to evaluate it. This is a minor deficiency which Massachusetts must correct prior to EPA's final action on the full I/M SIP.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

Although Massachusetts has made a commitment to meet these requirements, a detailed quality assurance program which meets the requirements of the federal I/M rule must be developed and submitted. This portion of the submittal does not meet the requirements of this section set forth in the federal I/M rule and is a major deficiency. The Commonwealth, within 30 days of publication of this document must commit to correct this major deficiency by a date certain within one year of interim conditional approval of this submittal.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations, contractors and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

A detailed description of this part of the program was not submitted. This a minor deficiency which must be corrected prior to final full approval of the Massachusetts I/M SIP.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

The Massachusetts SIP provides a commitment to meet all of the data collection requirements and has listed all the required data which will be collected. This part of the submittal meets the requirements of this section set forth in the federal I/M rule and is part of the basis for conditional interim approval of the Massachusetts I/M SIP.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

The Massachusetts data analysis and reporting procedures have not been developed. This is a minor deficiency which must be corrected prior to final full approval of the Massachusetts I/M SIP.

Inspector Training and Licensing or Certification—40 CFR 51.367

The federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections.

The Massachusetts proposed regulation at 310 CMR 60.02(14) requires training and certification of inspectors. This portion of the submittal meets the requirements of this portion of the federal I/M rule and is part of the basis for conditional interim approval of the Massachusetts I/M SIP.

Public Information and Consumer Protection—40 CFR 51.368

The federal I/M regulation requires the SIP to include public information and consumer protection programs. The Massachusetts SIP submittal contains a public awareness plan, however it does not provide for protection of whistle blowers. The plan also needs to be expanded to include information on state and federal laws and how motorists can maintain their vehicles to keep emissions low. This is a minor deficiency which must be corrected prior to final full approval of the Massachusetts I/M SIP.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the federal regulation, and a description of the repair technician training resources available in the community.

This part of the submittal meets the requirements of this section set forth in the federal I/M rule and is part of the basis for conditional interim approval of the Massachusetts I/M SIP.

Compliance With Recall Notices—40 CFR 51.370

The federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in a emission related recall receive the required repairs prior to completing the emission test and/or renewing the vehicle registration.

Most of the requirements of this section are met by the Massachusetts

submittal except motorists are not notified of required recalls prior to inspection periods so that they can meet the requirements in the current rather than subsequent inspection cycle. This is a minor deficiency which must be corrected prior to final full approval of the Massachusetts SIP.

On-road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of an on-road test shall be required to pass an out-of-cycle test.

The Massachusetts SIP submittal describes an on-road testing program which meets the requirements of the federal I/M rules and is part of the basis for conditional interim approval of the Massachusetts I/M SIP.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372 through 51.373

The Massachusetts submittal proposes to start two speed idle testing in 1997 and dynamometer testing in 1999. This is not consistent with EPA's interpretation of the required start date under the NHSDA. In a letter dated September 17, 1996, the Commonwealth agreed to move up the dynamometer start date to be consistent with other NHSDA states. Since this letter did not specify a precise date, EPA wrote back on October 7, 1996 to confirm the state's intent that the start date would be sometime in late 1997 but no later than January, 1998. EPA proposes that Massachusetts must start the dynamometer testing by November 15, 1997, or this conditional approval will convert to a disapproval after a findings letter is sent by EPA.

III. Discussion for Rulemaking Action

In order for EPA to conditionally approve the Massachusetts I/M SIP, the state must commit within 30 days of publication of this document to correct the following major elements of the SIP that EPA considers deficient by a date certain within one year of final interim approval of this submittal. These elements are:

(1) Credit claims: In several areas, Massachusetts has claimed credit for emission reductions which overstate the emission reductions which will occur, with no clear basis for those claims. These are beyond the issue of test-only versus test-and-repair network types. Revision of these factors as discussed above will necessitate recalculation of emission reductions from the program. The Commonwealth, within 30 days of publication of this document must commit, to revise and submit to EPA, by April 1, 1997, a complete revised 15% plan utilizing appropriate waiver, compliance rates, test type and the phase-in emission standards which will be used in November 1997 (i.e. ASM2 emission credits with phase in cutpoints.)

(2) The Commonwealth has now proposed a ''time extension'' program which restricts noncompliance with the program severely. This program must be further defined and submitted to EPA as a SIP revision by a date certain within one year of publication of final interim approval of this submittal. Other major deficiencies as outlined above must also be corrected in §§ 51.351 (Enhanced IM Performance Standard), 51.354 (Adequate Tools and Resources), 51.357 (Test Procedures and Standards), 51.359 (Quality Control), 51.360 (Waivers and Compliance via Diagnostic Inspection), 51.360 (Motorist Compliance Enforcement), and 51.363 (Quality Assurance). The Commonwealth, within 30 days of publication of this notice, must commit to correct these deficiencies by a date certain within one year of conditional interim approval by EPA.

If the Commonwealth does not make such a commitment within 30 days, EPA proposes in the alternative to disapprove this SIP. If these conditions are not met within the time specified, EPA today is proposing that this SIP revision convert to a disapproval.

If the Commonwealth makes the commitment within 30 days, EPA's conditional approval of the plan will continue for 18 months under the Highway Act if the Commonwealth has committed to cure all of the conditions specified in this document. EPA expects that within this period the Commonwealth will not only correct the deficiencies as committed to by the Commonwealth, but that the Commonwealth will also begin program start-up by November 15, 1997. If the Commonwealth does not correct deficiencies by the date(s) certain and implement the interim program by November 15, 1997, EPA is proposing in this document that the interim approval will convert to a disapproval after a finding letter is sent to the Commonwealth.

IV. Explanation of the Interim Approval

At the end of the 18 month interim period, the approval status for this program will automatically lapse pursuant to the NHSDA. It is expected that the Commonwealth will at that time be able to make a demonstration of the program's effectiveness using an appropriate evaluation criteria. As EPA expects that these programs will have started on or before November 15, 1997, the Commonwealth will have at least 6 months of program data that can be used for the demonstration. If the Commonwealth fails to provide a demonstration of the program's effectiveness to EPA within 18 months of the final interim rulemaking, the interim approval will lapse, and EPA will be forced to disapprove the Commonwealth's permanent I/M SIP revision if the Commonwealth does not demonstrate the interim program's effectiveness. If the Commonwealth's program evaluation demonstrates a lesser amount of emission reductions actually realized than were claimed in the Commonwealth's previous submittal, EPA will adjust the Commonwealth's credits accordingly and use this information to act on the Commonwealth's permanent I/M program.

V. Further Requirements for Permanent I/M SIP Approval

At the end of the 18 month period, final full approval of the Commonwealth's plan may be granted based upon the following criteria:

1. The Commonwealth has complied with all the conditions of its commitment to EPA,

2. EPA's review of the state's program evaluation confirms that the appropriate amount of program credit was claimed by the Commonwealth and achieved with the interim program,

3. Final program regulations are submitted to EPA, and

4. The Massachusetts I/M program meets all of the requirements of EPA's I/M rule, including those minor deficiencies found to be de minimis for purposes of interim approval.

VI. EPA's Evaluation of the Interim Submittal

EPA's review of this material indicates that the Massachusetts I/M SIP meets the requirements for conditional interim approval under the National Highway Systems Designation Act and the Clean Air Act. EPA is proposing a conditional interim approval of the Massachusetts SIP revision for motor vehicle inspection and maintenance,

which was submitted on March 27, 1996. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Proposed Action

EPA is proposing to conditionally approve this revision to the Massachusetts SIP for an interim enhanced I/M program. The conditions for approvability are as follows:

Within 30 days of this document, Massachusetts commits to submit by April 1, 1997 a complete approvable revised 15% plan which shows sufficient reductions from an enhanced I/M program utilizing emission credit estimates agreeable to EPA as discussed earlier in this document. This includes MOBILE modeling with a worst case analysis showing that the Commonwealth will meet the needed 15% reductions if the program only achieves reductions equivalent to ASM2 credit at ''phase-in'' cut points or the Commonwealth must reduce the credit claimed for the I/M program. Also, within 30 days of this document Massachusetts commits to submit by a date certain within one year of final interim approval, revised program evaluation modeling showing achievement of at least the low enhanced I/M standard by 2002.

In addition, within 30 days Massachusetts commits to submit by a date certain within one year of final interim approval, revisions to meet the requirements for Enhanced I/M Performance Standard—40 CFR 51.351, Adequate Tools and Resources—40 CFR 51.354, Test Procedures and Standards—40 CFR 51.357, Quality control—40 CFR 51.359, Waivers and Compliance via Diagnostic Inspection—40 CFR 51.360 , Quality Assurance—40 CFR 51.363 and a revised modeling analysis showing achievement of the performance standard by 2002.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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, 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: January 15, 1997.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 97–2194 Filed 1–29–97; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[CO–001–0009b; FRL–5674–8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation No.'s 3 and 7 for Pioneer Metal Finishing Inc. and a Revision to Regulation No. 7 for Lexmark International Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the revisions to the Colorado State Implementation Plan (SIP) to Regulation No. 3, ''Air Contaminant Emissions Notices,'' and Regulation No. 7, ''Regulation To Control Emissions of Volatile Organic Compounds.'' The revisions to Regulations Nos. 3 and 7 for Pioneer Metal Finishing Inc. (PMF) consist of a source specific SIP revision to allow PMF to purchase banked Volatile Organic Compound (VOC) emission reduction credits (ERC) from Coors Brewing Company (Coors), to enable PMF to come into compliance with the VOC Reasonable Available Control Technology (RACT) requirements of Regulation No. 7 (Reg. 7). The revision to Reg. 7 for Lexmark International Inc. (Lexmark) consists of a source-specific SIP revision to allow Lexmark to utilize the provisions of Reg.

7 to perform crossline averaging for the purposes of meeting the VOC RACT requirements of Reg. 7. In the Final Rules Section of this Federal Register, EPA is approving the State's State Implementation Plan (SIP) revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by March 3, 1997.

ADDRESSES: Written comments should be addressed to:Richard R. Long, Director, Air Program (8P2-A), United States Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office:

United States Environmental Protection Agency, Region 8, Air Program, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program (8P2-A), United States Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202–2466;Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the rules section of this Federal Register.

Dated: December 2, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 97–2289 Filed 1–29–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–265, RM–8913]

Radio Broadcasting Services; Dickson and Kingston Springs, Tennessee

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Tuned In Broadcasting, Inc., licensee of Station WYYB(FM), Channel 229A, Dickson, Tennessee, requesting the reallotment of Channel 229A from Dickson to Kingston Springs, Tennessee, and modification of the license for Station WYYB(FM) to specify Kingston Springs as its community of license. Channel 229A can be allotted to Kingston Springs in compliance with the Commission's minimum distance requirements with a site restriction of 11.9 kilometers (7.4 miles) east. The coordinates for Channel 229A at Kingston Springs are 36–07–13 and 86–59–03. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 229A at Kingston Springs or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before March 3, 1997, and reply comments on or before March 18, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Lauren Lynch Flick, Fisher, Wayland, Cooper, Leader & Zaragoza, L.L.P., 2001 Pennsylvania Avenue, NW, Suite 400, Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–265, adopted December 27, 1996, and released January 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–2311 Filed 1–29–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–24; RM–8973]

Radio Broadcasting Services; Midwest, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Windy Valley Broadcasting proposing the allotment of Channel 300A at Midwest, Wyoming, as the community's first local aural transmission service. Channel 300A can be allotted to Midwest in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 300A at Midwest are North Latitude 43–26–36 and West Longitude 106–16–24.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April 1, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Windy Valley Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–24, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. 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., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–2312 Filed 1–29–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

RIN 1018–AE07

1997 Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest

AGENCY: Fish and Wildlife Service Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) is revising the regulations governing the conduct of the 1997 Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest. The following changes are proposed by the Service: (1) Deadline for submitting entry; (2) technical requirements for design; and (3) subject matter of entry. The contest deadline is being reestablished for submitting entry to allow participants additional time to research the anatomy of eligible species since many species are located in many diverse geographical regions and may require more investigation and perfection of the artwork. The technical requirements for design to mat the entry over only sets uniformity for exhibiting at various museums across the country and protects the entry from being damaged. Additional clarification is needed under the subject matter of entry stating the design has to be the contestant's original ''hand drawn'' creation. The design may not be copied or duplicated from previously published art, including photographs, or computer-generated art otherwise it will be ineligible or disqualified.

DATES: Comments concerning these amendments must be received no later than March 31, 1997.

ADDRESSES: Send comments to: Manager of Licensing, Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street, NW, Suite 2058, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mrs. Lita F. Edwards, (202) 208–4354.

SUPPLEMENTARY INFORMATION: The Federal Duck Stamp Contest is the only Federal agency-run art contest and has been in existence since 1949 with the 1950 stamp the first to be selected in open competition. The Federal Duck Stamp 's main use is a revenue stamp needed by waterfowl hunters. This year's Contest and species information follows:.

1. Contest schedule:

1997–98 Federal Duck Stamp Contest—November 4–6, 1997

Public Viewing—Tuesday, November 4 from 10:00 a.m. to 2:00 p.m.

Judging—Wednesday, November 5 at 10:30 a.m. through Thursday, November 6 at 9:00 a.m.

2. The Contest will be held at the Department of the Interior building, Auditorium (C Street entrance), 1849 C Street, NW, Washington, DC.

3. The *three* eligible species for the Contest: (1) Barrow's Goldeneye; (2) Black Scoter; and (3) Mottled Duck.

As part of an effort to administer and make minor improvements to the Contest, the Service proposes the following changes to the 1997 contest:

1. Persons wishing to enter the 1997 Contest may submit entries anytime after July 1, but *all* entries must be postmarked no later than midnight Monday, September 15, 1997.

2. The Service is requiring that each entry must be matted (*over only*) with a 9x12 inch white mat, 1 inch wide, and the entire entry cannot exceed ¼ inch in total thickness. This new format is a requirement to secure the artwork from being damaged and sets uniformity for exhibiting at various museums across the country.

3. The Service is clarifying that the identified species must be the *dominant* feature of the design. The design must be the contestant's original ''*hand drawn*'' creation. The design may not be copied or duplicated from previously published art, including photographs. Photographs, computer-generated art, art produced from a computer printer or other computer/mechanical output device (air brush method excepted) are ineligible and will be disqualified.

The Federal Duck Stamp Program's intent is to keep the art competition as a traditional American art form. The history, tradition and beauty of this unique art form should be maintained by requiring art entries to be created in the traditional ''hand painted'' manner that artists have been submitting over the years.

This regulation was not subject to Office of Management and Budget review under Executive Order 12866. These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements. The Department of the Interior has determined that this regulation will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) as the changes/revisions to the Contest will affect individuals, not businesses or other small entities as defined in the Act.

List of Subjects in 50 CFR 91

Hunting, Wildlife.

Accordingly, Title 50, Part 91 of the Code of Federal Regulations is proposed to be amended as follows:

PART 91—(AMENDED)

1. The authority citation for Part 91 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

2. Section 91.11 is amended by revising paragraph (b) to read as follows:

§ 91.11 Contest deadlines.

* * * * *

(b) Entries must be postmarked no later than midnight September 15.

3. Section 91.13 is revised to read as follows:

§ 91.13 Technical requirements for design and submission of entry.

The design must be a horizontal drawing or painting seven (7) inches high and ten (10) inches wide. The entry may be drawn in any medium desired by the contestant and may be in either multicolor or black and white. No scroll work, lettering, bird band numbers, signatures or initials may appear on the design. Each entry must be matted (over *only*) with a nine (9) inch by twelve (12) inch white mat, one (1) inch wide, and the entire entry cannot exceed one quarter (¼) inch in total thickness. Entries must not be framed, under glass, or have a protective covering that is attached to the entry.

4. Section 91.14 is revised to read as follows:

§ 91.14 Restriction on subject matter to entry.

A live portrayal of any bird(s) of the five or fewer identified eligible species must be the dominant feature of the design. The design may depict more than one of the eligible species. Designs may include, but are not limited to, hunting dogs, hunting scenes, use of waterfowl decoys, National Wildlife Refuges as the background of habitat scenes, and other designs that depict the sporting, conservation, stamp collecting and other uses of the stamp. The overall mandate will be to select the best design that will make an interesting, useful and attractive duck stamp that will be accepted and prized by hunters, stamp collectors, conservationists, and others. The design must be the contestant's original ''hand drawn'' creation. The entry design may not be copied or duplicated from previously published art, including photographs. Photographs, computer-generated art, art produced from a computer printer or other computer/mechanical output device (air brush method excepted) art are not eligible to be entered into the contest and will be disqualified. An entry submitted in a prior contest that was not selected for the Federal or a state stamp design may be submitted in the current contest if it meets the above criteria.

Dated: January 17, 1997.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–2347 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 62, No. 20
Thursday, January 30, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 24, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agriculture Marketing Service

Title: Kiwifruit Grown in California—Marketing Order No. 920.
OMB Control Number: 0581–0149.
Summary: The USDA needs information from growers and handlers to select committee members, to conduct referenda, and collect inventory and shipment figures.
Need and Use of the Information: The information is used to regulate the provisions of Marketing Order No. 920.
Description of Respondents: Farms; Business or other for-profit.
Number of Respondents: 247.
Frequency of Responses: Recordkeeping; Reporting; On occasion; Monthly; Annually; Biennially; once every 6 yrs.
Total Burden Hours: 665.

Farm Service Agency

Title: Conservation Reserve Program, 7 CFR Parts 704 and 1410.
OMB Control Number: 0560–0125.
Summary: The Conservation Reserve Program (CRP) regulations set forth the basic policies, program provisions, and eligibility requirements for owners and operators to enter into and carry out long-term CRP contracts with financial and technical assistance and for making cost-share and annual rental payments under the program. This request reflects the Secretary's authority to enroll acreage in the program through 2002.
Need and Use of the Information: The information is needed to implement and provide program benefits under the current legislation.
Description of Respondents: Farms; Individuals or households; Business or other for-profit.
Number of Respondents: 278,000.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 41,277.

Animal and Plant Health Inspection Service

Title: Permit for Movement of Restricted Animals.
OMB Control Number: 0579–0051.
Summary: Information is collected for animals that are sick or have been exposed to disease if the animals are transported across state lines to a slaughtering establishment.
Need and Use of the Information: The information is used to prevent or control animal diseases.
Description of Respondents: Farms.
Number of Respondents: 10,130.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 2,346.

Animal and Plant Health Inspection Services

Title: Specimen Submission.
OMB Control Number: 0579–0090.
Summary: The form VS10–4 is submitted to the National Veterinary Services Laboratories. The form identifies the herd or flock from which the specimens were taken, the type of specimen taken and the species of animal.
Need and Use of the Information: The information is used to prevent and control domestic and exotic animal diseases.
Description of Respondents: Farms; State, Local or Tribal Government.
Number of Respondents: 12,000.
Frequency of Responses: Reporting: On Occasion.
Total Burden Hours: 15,149.

Donald Hulcher,
Deputy Departmental Clearance Officer.

[FR Doc. 97–2322 Filed 1–29–97; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Charleston, South Carolina, February 27 through March 1, 1997. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The meeting will be chaired by Genni Cross of The Trust for Public Land/California ReLeaf. The purpose of the meeting is to discuss emerging issues in Urban and Community Forestry and to review status reports on the Council's annual report. The meeting is open to the public, and time will be provided at the beginning of each major agenda topic for public input. In order to provide input, individuals must request time to speak and must specify topic(s) to be addressed by February 7, 1997. Council discussion is limited to Council members and Forest Service staff.

Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

DATES: The meeting will be held February 28 through March 1, 1997. A tour of local projects will take place on February 27, 9:00–3:00 p.m.

ADDRESSES: The meeting will be held at the Fulton Lane Inn, 202 King Street, Charleston, South Carolina.

Send written statements and/or proposed agenda items to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 1042 Park West Court, Glenwood Springs, CO 81601.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (970) 928–9264.

Dated: January 24, 1997.

Joan M. Comanor,

Deputy Chief.

[FR Doc. 97–2294 Filed 1–29–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Economic Impact of Cholesterol SRMs/ Definitive Methods Program; Proposed Data Collection

ACTION: Proposed data collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 31, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on the information collection instruments(s) and instructions should be directed to Michael Welch, Chemical Science and Technology Laboratory, National Institute of Standards and Technology, Building 324 (Chemistry), Room B–156, Gaithersburg, MD 20899, Phone: 301–975–3100), e-mail: michael.welch@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

NIST seeks to assess economic impacts of its cholesterol SRMs and related programs. The respondents will be U.S. clinical laboratories and clinical instrument producers and their customers. The results will be used by NIST for program evaluation purposes.

II. Method of Collection

Personnel of firms in the U.S. clinical laboratories and clinical instrument producers and their customers may respond to questionnaires by mail, fax, E-mail, or telephone.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: None.

Affected Public: Personnel of firms in the U.S. clinical laboratories and clinical instrument industries and their customers.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 25 hours.

Estimated Total Annual Cost: $2,500 ($25 \times \$100$ per hour fully burdened cost for a senior level technical manager.) There are no equipment or maintenance costs associated with this collection.

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques and other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: January 24, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–2287 Filed 1–29–97; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

January 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current sublimit for Categories 338–S/339–S/638–S/639–S is being reduced for carryforward applied in 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 54985, published on October 23, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only

in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 24, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 16, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Fiji and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on January 30, 1997, you are directed to reduce the limit for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339/638/639	1,168,614 dozen of which not more than 919,492 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].

[1] The limit has not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–2274 Filed 1–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of emergency submission for approval of Information Collection #3038–0023—Regulations and Forms Relating to Registration with the Commission.

SUMMARY: The Commodity Futures Trading Commission has submitted a request for emergency approval for information collection 3038–0023, Regulations and Forms Relating to Registration with the Commission. In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESS: Copies of the submission may be obtained from the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

Title: Regulations and Forms Relating to Registration with the Commission.

Control Number: 3038–0023.

Action: Extension.

Respondents: Commission Registrants.

Estimated Annual Burden: 27,467 hours.

Issued in Washington, D.C. on January 24, 1997.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 97–2250 Filed 1–29–97; 8:45 am]

BILLING CODE 6351–01–M

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 28, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–2407 Filed 1–28–97; 2:28 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 21, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–2408 Filed 1–28–97; 2:28 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 14, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–2409 Filed 1–28–97; 2:28 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 7, 1997.

PLACE: 1155 21st St., NW., Washington, D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–2410 Filed 1–28–97; 2:28 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Planning and Steering Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.2), notice is hereby given that the Planning and Steering Advisory Committee will meet February 19, 1997 from 9:00 a.m. to 4:00 p.m., at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive Order. Accordingly, the Under Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

FOR FURTHER INFORMATION CONTACT: LCDR J.D. Skufca, 2000 Navy Pentagon, Room 4D534, Washington, D.C. 20350–2000, telephone Number, (703) 693–7248.

Dated: January 21, 1997.

D. E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–2275 Filed 1–29–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notuice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: February 20, 1997, from 1 p.m. to 4:30 p.m.

ADDRESSES: Hubert H. Humphrey Building, Room 503A/529A, 200 Independence Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to discuss issues related to interagency coordination at the state and local level and the role of the FICC.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, DC 20202–2544, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–2254 Filed 1–29–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–588]

Proposed Information Collection and Request for Comments

January 24, 1997.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before March 13, 1997.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–588 ''Emergency Natural Gas Transportation, Sale and Exchange Transactions'' (OMB No. 1902–0144) is used by the Commission to implement the statutory provisions of

Section 7(c) of the Natural Gas Act (NGA) (15 U.S.C. 717–717w) and provisions of the Natural Gas Policy Act of 1978 (NGP), 15 U.S.C. 3301–3432. Under the NGA, a natural gas company must obtain Commission approval to engage in the transportation, sale or exchange of natural gas in interstate commerce. However, Section 7(c) exempts from certificate requirements ''temporary acts or operations for which the issuance of a certificate will not be required in the public interest.'' The NGPA also provides for non-certificated interstate transactions involving intrastate pipelines and local distribution companies.

A temporary operation, or emergency, is defined as any situation in which an actual or expected shortage of gas supply would require an interstate pipeline company, intrastate pipeline, local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to any customer. The natural gas companies file the necessary information with the Commission so that it may determine if the transaction/operation qualifies for exemption. A report within forty-eight hours of the commencement of the transportation, sale, or exchange, a request to extend the sixty-day term of the emergency transportation, if needed, and a termination report are required. The data required to be filed for the forty-eight-hour report is specified by 18 CFR 284.270 (a) (b), (c). The termination report is required by 18 CFR 284.270(d).

Action

The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement

Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
55	1	10	550 hours.

The estimated total cost to respondents is $27,500 (550 hours divided by 2,087 hours per year per employee times $104,350 per year per average employee = $27,500). The cost per respondent is $500.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2262 Filed 1–29–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–88–002]

Alabama-Tennessee Natural Gas Company; Notice of Compliance Filing

January 24, 1997.

Take notice that on January 21, 1997, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet with a proposed effective date of May 21, 1997:

First Substitute Third Revised Sheet No. 101

Alabama-Tennessee states that the purpose of the filing is to comply with the order issued by the Commission in this proceeding on December 19, 1996 (77 FERC ¶§ 61,281).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2263 Filed 1–29–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–234–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 24, 1997.

Take notice that on January 21, 1997 Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with an effective date of February 23, 1997:

Twenty-ninth Revised Sheet No. 20A
Original Sheet No. 99G

Algonquin states that the purpose of this filing is to flow through a refund from National Fuel Gas Supply Corporation related to its Account Nos.

191 and 186, as filed in Docket No. RP97-83-000.

Algonquin states that copies of this filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All Such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2264 Filed 1–29–97; 8:45 am]

BILLING CODE 6717–10–M

[Docket No. CP97–199–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

January 24, 1997.

Take notice that on January 17, 1997, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP97–199–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate an additional point of delivery in Greensville County, Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate an additional point of delivery for firm transportation service to Commonwealth Gas Services, Inc. (COS), and will provide the service pursuant to Columbia's blanket certificate issued in Docket No. CP86–240–000 under existing authorized rate schedules and within certificated entitlements. The estimated quantity delivered at this point will be 1600 Dth/day and 106/090 Dth annually. As part of the firm transportation service to be provided, COS has requested that their existing SST Agreement with Columbia be amended by increasing 1600 Dth/day at the proposed new Georgia-Pacific point of delivery and reducing the MDDOs at the existing Portsmouth #4 point of delivery by 1600 Dth/day. The quantities of natural gas to be provided through the new point of delivery will be within Columbia's existing design day and annual customer obligations. Columbia states that the construction cost is estimated at $99,800 and that COS will reimburse Columbia 100% of the total actual cost of construction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (19 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2265 Filed 1–29–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP97–233–000 and TM97–3–25–002]

Mississippi River Transmission Corporation; Notice of Corrected Filing and Request for Waiver

January 24, 1997.

Take notice that on January 21, 1997, Mississippi River Transmission Corporation (MRT) submitted for filing revised worksheets to correctly account for the costs in its Miscellaneous Revenue Flowthrough Adjustment filing in Docket No. TM97–3–25–000. In addition, MRT filed a request for a waiver of the provisions of Section 18.2 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, to permit MRT to credit to each Rate Schedule FTS and SCT Customer based on each Customer's contract demand at January 1, 1997; ITS Customers will receive a credit based on actual usage during 1996. MRT also requests a waiver of such other provisions of its FERC Gas Tariff, or other Commission regulations, as may be necessary to allow this filing to become effective as proposed.

MRT states that copies of this filing have been mailed to each of MRT's customers, all parties on the official service list in Docket No. TM97–3–25–000, and the State Commissions of Arkansas, Illinois, and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 31, 1997. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2266 Filed 1–29–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–201–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

January 24, 1997.

Take notice that on January 21, 1997, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed a request with the Commission in Docket No. CP97–201–000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a sales tap authorized in blanket certificate issued in Docket No. CP83–4–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

National proposes to construct and operate a new sales tap in McKean

County, Pennsylvania, on National's Line S–21. The maximum proposed quantity of gas to be delivered through the proposed facility would be up to 500 Mcf per day. This tap would provide service to National Fuel Gas Distribution Corporation, pursuant to National's EFT Rate Schedule. The estimated cost of the sales tap is $60,000, for which National would be reimbursed.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2267 Filed 1–29–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–504–000 and OA97–32–000]

Pacific Northwest Generating Cooperative; Notice of Issuance of Order

January 24, 1997.

Pacific Northwest Generating Cooperative (PNGC) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, PNGC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by PNGC. On January 13, 1997, the Commission issued an Order Conditionally Accepting For Filing Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's January 13, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by PNGC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, PNGC is hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of PNGC, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of PNGC's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 12, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2268 Filed 1–29–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–226–001]

Questar Pipeline Company; Notice of Tariff Filing

January 24, 1997.

Take notice that on January 22, 1997, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective February 12, 1997, and May 1, 1997:

Tariff Sheets To Be Effective February 12, 1997

Substitute Second Revised Sheet No. 164
Substitute Original Sheet No. 170A

Tariff Sheet To Be Effective May 1, 1997

Third Revised Sheet No. 164

Questar states that the proposed tariff sheets correct Second Revised Sheet No. 164, as tendered with the January 13 filing. Questar states further that this correction necessitates the filing of all tariff sheets identified above.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2269 Filed 1–29–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–193–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

January 24, 1997.

Take notice that on January 10, 1997, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP97–193–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to expand an existing delivery lateral to Piedmont Natural Gas Company, Inc. (Piedmont) in Lincoln and Catawba Counties, NC.; for approval of Transco's' initial reservation rate surcharge for costs associated with the delivery lateral; for approval of the reservation rate surcharge methodology; for authorization to make filings under Section 4 of the NGA; and to make adjustments to the surcharge, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Transco proposes to expand the lateral by (a) constructing and operating approximately 17.77 miles of 16-inch pipeline loop on its existing 10-inch Maiden Delivery Lateral, thereby accommodating an increase delivery of 38,000 dt/d of gas to Piedmont through its existing Lowesville Meter Station. Transco estimates the cost of this expansion to be $13,236,000, and that such expansion would not create any detriment of disadvantage to its other customers.

Any person desiring to be heard or to make any protest with reference to said

application should on or before February 14, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 of 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2270 Filed 1–29–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP97–220–002 and RP89–183–070]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 24, 1997.

Take notice that on January 21, 1997, Williams Natural Gas Company (WNG), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Substitute Third Revised Sheet Nos. 8C and 8D, with the proposed effective date of February 1, 1997.

WNG states that on December 31, 1996, it filed, pursuant to Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, its first quarter 1997 report of take-or-pay buyout, buydown and contract reformation costs and gas supply related transition costs, and the application or distribution of those costs and refunds. A revision was made January 13, 1997, to revise Schedule 4 of the original filing to reflect certain customers' January MDTQ's which were not finalized until after January 1, 1997. The instant filing is being made to revise certain customers' MDTQ's which were not finalized at January 13, 1997. All other aspects of WNG's December 31 filing are unchanged.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2271 Filed 1–29–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–76–000]

Wyoming Interstate Company, Ltd; Modification of Pending Technical Conference

January 24, 1997.

The Secretary to the Commission previously issued a notice that the Staff would hold an technical conference in these proceedings at 10:00 a.m., January 28, 1997, at 888 First Street, N.E., Washington, D.C., in a room to be designated at that time. The purpose of the conference was to discuss Wyoming Interstate Company, Ltd Company's proposed increase of the Fuel Gas and Unaccounted-for Gas percentage component of its transportation rates. On January 21, 1997, Public Service Company of Colorado and Cheyenne Light, Fuel, and Power Company (PSCo) filed a notice of withdrawal of protest with the Commission.

PSCo was the only active party and no longer desires to hold a technical conference. However, the proposed technical conference was also to address certain matters of concern to the Commission staff. These are expected to require only a small amount of time. Therefore, in the interest of administrative efficiency, the technical conference will be conducted by telephone on the date and time scheduled. Questions should be directed to John M. Robinson, (202) 208–0808, or Leon Smith, (202) 208–0505.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2272 Filed 1–29–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–108–010, et al.]

Heartland Energy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 23, 1996.

Take notice that the following filings have been made with the Commission:

1. Heartland Energy Services, Inc.

[Docket No. ER94–108–010]

Take notice that on January 9, 1997, Heartland Energy Services, Inc. tendered for filing copies of its revised FERC Rate Schedule No. 1.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Mid-American Resources, Inc., Westcoast Power Marketing, Inc., Ruffin Energy Services, Inc., Prairie Winds Energy, Inc., WPS Energy Services, Inc., Alternate Power Source, Inc., CPS Capital, Ltd.

[Docket Nos. ER95–78–003, ER95–378–006, ER95–1047–005, ER95–1234–003, ER96–1088–006, ER96–1145–001, and ER96–1798–002]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 13, 1997, Mid-American Resources, Inc. filed certain information as required by the Commission's April 6, 1995 order in Docket No. ER95–78–000.

On October 31, 1996, Westcoast Power Marketing, Inc. filed certain information as required by the Commission's April 20, 1995, order in Docket No. ER95–378–000.

On January 7, 1997, Ruffin Energy Services, Inc. filed certain information as required by the Commission's July 7, 1995, order in Docket No. ER95–1047–000.

On January 9, 1997, Prairie Winds Energy Inc. filed certain information as required by the Commission's August 28, 1995, order in Docket No. ER95–1234–000.

On October 30, 1996 WPS Energy Services, Inc. filed certain information as required by the Commission's April 16, 1996 order in Docket No. ER96–1088–000.

On December 23, 1996, Alternate Power Source, Inc. filed certain information as required by the Commission's April 30, 1996, order in Docket No. ER96–1145–000.

On January 7, 1997 CPS Capital, Ltd filed certain information as required by the Commission's June 27, 1996, order in Docket No. ER96–1798–000.

3. Niagara Mohawk Power Corporation

[Docket No. ER96–1687–001]

Take notice that on December 31, 1996, Niagara Mohawk Power Corporation tendered for filing revised copies of its July 26, 1996 compliance filing in the above-referenced docket.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER97–121–000]

Take notice that Cinergy Services Inc. (Cinergy) on December 27, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Power Coordination Agreement between Cinergy and Wabash Valley Power Association, Inc.

The modifications are being made to comply with the unbundling requirements for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Wabash Valley Power Association, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: February 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. National Gas & Electric, L.P.

[Docket No. ER97–845–000]

Take notice that on January 13, 1997, National Gas & Electric, L.P. tendered for filing a Notice of Withdrawal of its December 17, 1996, filing in the above-referenced docket.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas City Power & Light Company

[Docket No. ER97–1028–000]

Take notice that on January 16, 1997 Kansas City Power & Light Company tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. TC Power Solutions

[Docket No. ER97–1117–000]

Take notice that on January 7, 1997, TC Power Solutions tendered for filing a petition for acceptance of initial rate schedule, waivers and blanket authority.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Western Resources, Inc.

[Docket No. ER97–1127–000]

Take notice that on January 6, 1997 Western Resources, Inc. (Western Resources) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Rate Schedule No. 226. Western Resources states the purpose of the change is to modify the Electric Power Agreement between Western Resources and the City of Holton, Kansas, by adding Service Schedule GD to the contract. The change is proposed to become effective March 10, 1997.

Copies of the filing were served upon the City of Holton and the Kansas Corporation Commission.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Electric Company

[Docket No. ER97–1128–000]

Take notice that on January 6, 1997, Commonwealth Electric Company (Commonwealth) tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and New England Power Company (NEP). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to NEP under Commonwealth's FERC Electric Tariff, Original Volume No. 6, accepted for filing in Docket No. OA96–167–000.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Electric Company

[Docket No. ER97–1129–000]

Take notice that on January 6, 1997, Commonwealth Electric Company (Commonwealth) tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and The Power Company of America, L.P. (Power Company of America). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to Power Company of America under Commonwealth's FERC Electric Tariff, Original Volume No. 6, accepted for filing in Docket No. OA96–167–000.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Cambridge Electric Light Company

[Docket No. ER97–1130–000]

Take notice that on January 6, 1997, Cambridge Electric Light Company (Cambridge) tendered for filing a non-firm point-to-point transmission service agreement between Cambridge and The Power Company of America, L.P. (Power Company of America). Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will provide non-firm point-to-point transmission service to Power Company of America under Cambridge's FERC Electric Tariff, Original Volume No. 8, accepted for filing in Docket No. OA96–178–000.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER97–1137–000]

Take notice that on January 7, 1997, GPU Energy (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as ''GPU Energy''), filed a Service Agreement between GPU and VTEC Energy Inc. (VTEC) dated December 9, 1996. This Service Agreement specifies that VTEC has agreed to the rates, terms and conditions of the GPU Companies' open access transmission tariff filed on July 9, 1996, in Docket No. OA96–114–000.

GPU requests a waiver of the Commission's notice requirements for

good cause shown and an effective date December 9, 1996, for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on Equitable.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER97–1138–000]

Take notice that on January 7, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which CNG Power Services Corporation will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of December 30, 1996.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER97–1139–000]

Take notice that on January 7, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which Enron Power Marketing, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of December 30, 1996.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ER97–1140–000]

Take notice that on January 7, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Coastal Electric Services Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of December 30, 1996.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of Colorado

[Docket No. ER97–1141–000]

Take notice that on January 7, 1997, Public Service Company of Colorado, tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service Company of Colorado and PanEnergy Trading & Market Services L.L.C. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests that this filing be made effective December 12, 1996.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company

[Docket No. ER97–1142–000]

Take notice that on January 7, 1997, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Southern Energy Trading and Marketing, Inc. for Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on January 1, 1997.

FPL states that this filing is in accordance with Section 35 of the Commission's regulations.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power & Light Company

[Docket No. ER97–1145–000]

Take notice that on January 8, 1997, Florida Power & Light Company (FPL), filed letter notices dated December 29, 1995 and December 19, 1996 from Seminole Electric Cooperative Incorporated to FPL. The letter notices contain information provided pursuant to Section 7.13(i) of the Aggregated Billing Partial Requirements Agreement between Florida Power & Light Company and Seminole Electric Cooperative Incorporated, dated May 16, 1984. FPL requests that the December 29, 1995, letter notice be made effective January 1, 1997, and the December 19, 1996, letter notice be made effective March 8, 1997.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Electric Company

[Docket No. ER97–1147–000]

Take notice that on January 8, 1997, Commonwealth Electric Company (Commonwealth), tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and Equitable Power Services Company (Equitable Power). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to Equitable Power under Commonwealth's FERC Electric Tariff, Original Volume No. 6, accepted for filing in Docket No. OA96–167–000.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Cambridge Electric Light Company

[Docket No. ER97–1148–000]

Take notice that on January 8, 1997, Cambridge Electric Light Company (Cambridge), tendered for filing a non-firm point-to-point transmission service agreement between Cambridge and Western Power Services, Inc. (Western Power). Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will provide non-firm point-to-point transmission service to Western Power under Cambridge's FERC Electric Tariff, Original Volume No. 8, accepted for filing in Docket No. OA96–178–000.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Cambridge Electric Light Company

[Docket No. ER97–1149–000]

Take notice that on January 8, 1997, Cambridge Electric Light Company (Cambridge), tendered for filing a non-firm point-to-point transmission service agreement between Cambridge and Commonwealth Electric Company (Commonwealth). Cambridge will provide non-firm point-to-point transmission service to Commonwealth under Cambridge's FERC Electric Tariff, Original Volume No. 8, accepted for filing in Docket No. OA96–178–000.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Commonwealth Electric Company

[Docket No. ER97–1150–000]

Take notice that on January 8, 1997, Commonwealth Electric Company (Commonwealth), tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and Western Power Services, Inc. (Western Power). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to

Western Power under Commonwealth's FERC Electric Tariff, Original Volume No. 6, accepted for filing in Docket No. OA96–167–000.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Electric Company

[Docket No. ER97–1151–000]

Take notice that on January 8, 1997, Commonwealth Electric Company (Commonwealth), tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and Cambridge Electric Light Company (Cambridge). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to Cambridge under commonwealth's FERC Electric Tariff, Original Volume No. 6, accepted for filing in Docket No. OA96–167–000.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Cambridge Electric Light Company

[Docket No. ER97–1152–000]

Take notice that on January 8, 1997, Cambridge Electric Light Company (Cambridge), tendered for filing a non-firm point-to-point transmission service agreement between Cambridge and Equitable Power Services Company (Equitable Power). Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will provide non-firm point-to-point transmission service to Equitable Power under Cambridge's FERC Electric Tariff, Original Volume No. 8, accepted for filing in Docket No. OA96–178–000.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Company

[Docket No. ER97–1153–000]

Take notice that on January 8, 1997, New England Power Company (NEP), filed three service agreements with Plum Street Energy Marketing, Inc., Coral Power, L.L.C. and Equitable Power Services Company for non-firm, point-to-point transmission service under NEP's open access transmission service, FERC Electric Tariff, Original Volume No. 9.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Public Service Electric and Gas Company

[Docket No. ER97–1154–000]

Take notice that on January 8, 1997, Public Service Electric and Gas Company (PSE&G), tendered for filing agreements to provide non-firm transmission service to Central Vermont Public Service Corporation and Plum Street Energy Marketing, Inc., pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96–80–000.

PSE&G further requests waiver of the Commission's regulations such that the agreements can be made effective as of December 31, 1996.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Interstate Power Company

[Docket No. ER97–1171–000]

Take notice that on December 24, 1996, Interstate Power Company requests that Rate Schedule No. 21 be removed from the Ratis report.

Comment date: February 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Clear Lake Cogeneration Limited Partnership

[Docket No. QF83–205–006]

On January 17, 1997, Clear Lake Cogeneration Limited Partnership (Applicant) tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the ownership and the electric power production capacity of the cogeneration facility.

Comment date: February 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Cogenron Inc.

[Docket No. QF85–116–003]

On January 17, 1997, Cogenron Inc. (Applicant) tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the ownership and the electric power production capacity of the cogeneration facility.

Comment date: February 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Western Resources, Inc.

[Docket No. ER97–1143–000]

Take notice that on January 7, 1997, Western Resources, Inc. (Western Resources), tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Rate Schedule No. 250. Western Resources states the purpose of the change is to modify the Electric Power Supply Agreement between Western Resources and the City of Burlingame, Kansas, by adding Service Schedule GD to the contract. The change is proposed to become effective March 10, 1997.

Copies of the filing were served upon the City of Burlingame and the Kansas Corporation Commission.

Comment date: February 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2308 Filed 1–29–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5682–4]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of Agency receipt of a notification of intent to certify equipment and initiation of 45-day public review and comment period.

SUMMARY: Johnson Matthey Incorporated (JMI) has submitted to the Agency a notification of intent to certify

urban bus retrofit/rebuild equipment pursuant to 40 CFR Part 85, Subpart O. The equipment, referred to by JMI as the Catalytic Reduction Technology-Cam (CRT–C) kit, consists of proprietary cam shafts, a CEM II™ catalytic exhaust muffler, and instructions that the engine must be rebuilt using specific engine rebuild parts and certain engine settings. The candidate kit is applicable to all 6V92TA, 6V71T, and 6V71TA urban bus engine models made by Detroit Diesel Corporation (DDC) from model years 1979 to 1989 and equipped with mechanical unit injectors (MUI).

JMI intends this equipment to be certified to the particulate matter standard of 0.10 grams per brake-horsepower-hour (g/bhp-hr) for less than the applicable life cycle cost limit. If the Agency certifies that this (or other) equipment complies with the 0.10 g/bhp-hr standard and is available for less than the applicable cost limit, then operators with affected engines will be required to use equipment certified to the 0.10 g/bhp-hr standard.

Pursuant to § 85.1407(a)(7), today's Federal Register notice summarizes the notification, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well as any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in Category XV–A of Public Docket A–93–42, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. This docket is located at the address listed below.

Today's notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to the addresses below.

DATES: Comments must be submitted on or before March 17, 1997.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Air Docket A–93–42 (Category XV–A), Room M–1500, 401 M Street S.W., Washington, DC 20460.

2. William Rutledge, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460.

The JMI notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 233–9297.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Option 1 establishes particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Option 2 is a fleet averaging program that establishes a specific annual target level for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is certification of retrofit/rebuild equipment, which begins when an equipment manufacturer submits an application for certification (referred to in the rule as a notification of intent to certify). To meet either of the two compliance options, operators of the affected buses must use equipment that has been certified by EPA. Emissions requirements under either of the two options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Option 1, equipment must be certified as meeting a 0.10 g/bhp–hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Option 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program.

Under Option 1, additional information regarding cost must be submitted in the notification, in order for certification of that equipment to initiate (or trigger) program requirements for a particular engine model. In order for the equipment to serve as a trigger, the certifier must guarantee that the equipment will be offered to affected operators for $7,940 or less at the 0.10 g/bhp–hr PM level, or for $2,000 or less for the 25 percent or greater reduction in PM. Both of the above amounts are based on 1992 dollars and include life cycle costs incremental to the cost of a standard rebuild.

II. Notification of Intent to Certify

In a notification of intent to certify equipment signed December 9, 1996, Johnson Matthey (JMI) has applied for certification of equipment under the Environmental Protection Agency's (the Agency) Urban Bus Retrofit/Rebuild Program. The candidate kit is applicable to all 6V92TA, 6V71T, and 6V71TA urban bus engine models made by Detroit Diesel Corporation (DDC) from model years 1979 to 1989 and equipped with mechanical unit injectors (MUI). The equipment, referred to as the Catalytic Reduction Technology—Cam (CRT–C) kit, consists of proprietary cam shafts, a CEM II™ catalytic exhaust muffler, and installation instructions that require the engine to be rebuilt using specified engine rebuild parts and certain engine settings. The CRT–C kit would be available in three horsepower levels (253, 277, and 340) for 6V92TA engines, and in one horsepower level (265) for 6V71 engines.

The CEM II™ catalytic exhaust muffler of the CRT–C kit contains a different formulation from the CEM™ certified for the urban bus program as described in the Federal Register on April 17, 1996 (61 FR 16773). Therefore, transit operators cannot use the previously certified CEM™ in place of the new CEM II™. The CEM II™ is the same size and shape as the CEM™, is a direct, bolt-on replacement for the original equipment muffler, and is designed to fit the specific bus/engine combination.

The CRT–C kit is to be used in conjunction with an engine rebuild performed in accordance with standard DDC rebuild procedures using a list of specified engine rebuild parts. The installation instructions state that the list of parts for the rebuild (excluding the cams) can be purchased from traditional DDC or equivalent parts sources. The subject of equivalent parts

is discussed below. The notification states that the candidate equipment achieves a particulate matter (PM) level of 0.10 g/bhp-hr, and the life cycle cost is guaranteed by JMI to be less than $7,940 (in 1992 dollars) for all affected operators. The use of the equipment by transit operators to meet program requirements is discussed below.

The kit instructions includes new settings for the fuel injector height and fuel modulator, as appropriate to each engine model.

JMI presents exhaust emissions data from testing two Detroit Diesel Corporation (DDC) engines in accordance with procedures set forth at 40 CFR Part 86, Subparts N and I. The notification indicates that the test engines were selected as ''worst case'' based on Table 3 of 58 FR 21373 (April 23, 1993). A DDC engine model 6V92TA MUI was tested both in a 1984 model year configuration and retrofitted with the CRT–C kit, and a DDC engine model 6V71TA MUI (originally 1983 model year) was only tested retrofitted with the CRT–C kit. Table A below summarizes the data.

TABLE A.—EXHAUST EMISSIONS SUMMARY

Gaseous and particulate test	g/bhp-hr			
	1988 HDDE standards	1984 6V92TA MUI baseline	6V92TA MUI with CRT–C	6V71TA MUI with CRT–C
HC	1.3	0.7	0.3	0.2
CO	15.5	1.1	0.5	0.8
NO_X	10.7	9.5	10.2	10.2
PM	0.60	0.56	0.08	0.096
BSFC [1]		0.475	0.470	0.464
Smoke test	**Standards percent**	**Percent opacity**		
ACCEL	20	3.1	2.9	2.3
LUG	15	2.0	2.0	1.3
PEAK	50	4.8	3.6	2.9

[1] Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp-hr.

The data of Table A indicate that for both test engines, when rebuilt with the CRT–C kit, PM emissions are less than 0.10 g/bhp-hr, and emissions of hydrocarbon (HC), carbon monoxide (CO), and smoke opacity are within applicable federal standards. The data also indicate that the candidate kit increases NOx emissions roughly 7 percent above the level of the baseline 1984 model year configuration. This level (that is, with CRT–C installed) is less than the 1985–1989 federal standard for NO_X (10.7 g/bhp-hr). The Agency requests comments on whether the emissions test data presented by JMI demonstrate that all engines for which certification is requested will meet applicable federal standards with the candidate kit installed.

The Agency does not believe that the information provided supports certification of engines beyond model year 1989, because the federal new engine standard for NO_X dropped in 1990 to 6.0 g/bhp-hr and in 1991 to 5.0 g/bhp-hr. (The NO_X level of either test engine, when rebuilt with the candidate kit, is greater than 10 g/bhp-hr.) Additionally, the Agency believes that there is no support for certification of DDC's ''DDEC'' engines, because neither test engine is equipped with electronically-controlled fuel injection. Therefore, applicability of the candidate kit has been restricted to 6V92TA, 6V71T, and 6V71TA urban bus engine models made by Detroit Diesel Corporation (DDC) from model years 1979 to 1989 and equipped with mechanical unit injectors (MUI).

For the 6V92TA test engine, JMI also presents baseline test data from a standard 1984 model year configuration. This data documents PM emissions of 0.56 g/bhp-hr in the 1984 model year configuration. A list of parts used in the engine rebuild is provided in the notification. Other engines, for which the CRT–C kit is intended to apply, are expected to meet the 0.10 g/bhp-hr PM standard because the kit instructs the rebuilder to replace all emissions-related parts during the rebuild with JMI-specified parts. The emission level of the recipient engine, prior to installation of CEM–II catalyst, is expected to be predictable because all emission-related parts are replaced using specific rebuild components and settings specified with the kit. The combination of the specified engine rebuild parts, proprietary camshafts, new settings of the kit, and CEM–II, results in a PM level less than 0.10 g/bhp-hr. The Agency requests comments on whether the emissions data presented by JMI demonstrate that all engines for which certification is intended will meet the 0.10 g/bhp-hr PM standard.

The part numbers of the specified rebuild components are provided in JMI's notification. JMI indicates that replacing such emission-related components is typically part of a standard rebuild. JMI also states that other parts, equivalent to DDC parts, can be used for the standard rebuild required with installation of the equipment. JMI defines equivalent parts as parts which are substituted for original-equipment (OE) parts and have been engineered to represent equal usage with equivalent specifications, materials of construction, tolerances, and warranty, et cetera, and must have gained acceptance in the market place as equivalent replacements. The Agency asks for public comment regarding how an operator, or the Agency, knows that an aftermarket part is equivalent to an OE part, especially with respect to parameters that affect emissions performance, and what assurance there is that such parts would result in the same emissions performance. The use of aftermarket parts might also impact life cycle costs, which is discussed below.

JMI's notification provides life cycle cost information for the candidate kit. JMI guarantees that it will offer the kit for less than the life cycle ceiling of $7,490 (in 1992 dollars) as applicable, to all affected operators. If certified as proposed in the notification (and in the absence of other earlier certification that triggers the 0.10 g/bhp-hr), the candidate kit would trigger program requirements for the 0.10 g/bhp-hr PM standard for applicable engines. Table B

below summarizes the life cycle costs for the CRT–C kit that are incremental to the cost associated with a standard rebuild.

TABLE B.—CRT–C KIT LIFE CYCLE COST SUMMARY

[1992 dollars]

Maximum CRT–C Equipment Cost	$6,550
Maximum Installation Cost (2 hours catalyst installation)	70
Fuel Economy Impact	0
Maintenance Cost	0
Less Cost for Standard Camshafts	(785)
Maximum CRT–C Equipment Cost	6,550
Maximum Life Cycle Cost (Sum of Above)	5,835

The Agency has determined that the value of the maximum CRT–C equipment cost ($6,550) is approximately equivalent to $7,404 in today's dollars. This is determined by multiplying the $6,550 from Table B above by the Consumer Price Index for All Urban Consumers (that is, the CPI–U for all items) for November 1996, and then dividing by the average CPI–U determined for 1992. According to the U.S. Bureau of Labor Statistics, the CPI–U before seasonal adjustment in November is 158.6 (on a reference base of 1982 to 1984 = 100), and the average CPI–U for 1992 is 140.3. The value may change as the CPI–U changes.

JMI indicates that the engine is to be rebuilt according to the engine manufacturer's standard written rebuild procedures and specifications except where amended by JMI written instructions. Therefore, JMI claims that the life cycle cost ($5,835) of the CRT–C kit is incremental to the cost of a standard rebuild. Installation of the CRT–C kit is essentially identical to a standard engine rebuild and the installation of a muffler. The life cycle cost (in 1992 dollars) of the JMI kit is stated to be $5,835, which includes the maximum purchase cost for the kit of $6,550, and maximum installation cost of $70. The incremental maintenance cost and fuel economy impact are stated to be zero. The camshafts provided with the CRT–C kit offset the need and cost for camshafts otherwise replaced during an engine rebuild ($785).

As noted above, the CRT–C kit would be sold as complimentary to a standard engine rebuild. The balance of the specified parts for the standard rebuild (excluding the cams) would be purchased by the rebuilder from traditional DDC or equivalent parts sources. JMI indicates that because the parts would typically be replaced anyway during an engine rebuild, purchase of the specified parts on the list would not represent an incremental life cycle cost. The list of the specific emission-related parts are an essential part of the CRT–C kit from an emissions standpoint, although the parts, per se, are not provided with the kit. The Agency requests public comment concerning whether the specified parts present incremental costs to a standard rebuild. This point is important because the life cycle cost analysis provided by JMI assumes that use of the listed part numbers will not impact life cycle costs of the candidate equipment.

JMI states in its notification that there is no fuel economy penalty associated with the candidate equipment. As shown in Table A above, this is supported by the data from the baseline and retrofit tests on the 6V92TA engine that indicate no fuel consumption impact of the CRT–C kit. At this point, the Agency has not determined whether a fuel consumption penalty exists, and requests comments concerning this issue. The Agency will use information gathered through public comment and from the certifier to resolve this issue.

The JMI notification provides a product warranty that references the emissions performance and emissions defect warranties required in accordance with section 85.1409 of the program regulations.

Even if ultimately certified by the Agency, the equipment described in JMI's notification may require additional review by the California Air Resources Board (CARB) before use in California. The Agency recognizes that special situations may exist in California that are reflected in the unique emissions standards, engine calibrations, and fuel specifications of the State. While requirements of the federal urban bus program apply to several metropolitan areas in California, the Agency understands the view of CARB that equipment certified under the urban bus program, to be used in California, must be provided with an executive order exempting it from the anti-tampering prohibitions of that State. Those interested in additional information should contact the Aftermarket Part Section of CARB, at (818) 575–6848.

If the Agency certifies the candidate equipment and no other certification triggers the 0.10 g/bhp-hr standard, then urban bus operators who choose to comply with compliance Option 1 of this regulation will be required to use equipment certified to the 0.10 g/bhp-hr standard no later than six months after certification, when applicable engines are rebuilt or replaced. If certified, then operators using Option 2 will use the certification levels in calculations for fleet level attained (FLA).

The date of this notice initiates a 45-day period during which the Agency will accept written comments relevant to whether the equipment described in the JMI notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review this notification, and provide written comments during the 45-day review period. Separate comments should be provided in writing to each of the addresses listed under the Addresses section of this notice.

At a minimum, the Agency expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) the certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify, including whether the data provided by JMI complies with the life cycle cost requirements.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) problems with installing, maintaining, and/or using the equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The Agency will review this notification of intent to certify, along with comments received from the interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–2324 Filed 1–29–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5682–2]

Notice of Open Meeting of the Environmental Financial Advisory Board on March 19–20, 1997

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will

hold an open meeting of the full Board in Washington, D.C. on March 19–20, 1997. The meeting will be held at EPA Headquarters, 401 M St. S.W., Washington, D.C. 20460. The room location is Conference Room 3 North in the EPA North Conference area. The March 19 session will run from 9:00 a.m. to 5:00 p.m., while the March 20 session will begin at 8:30 a.m. and end at approximately 11:30 a.m.

EFAB is chartered with providing authoritative analysis and advice to the EPA Administrator on environmental finance. This will be a working meeting to discuss and review ongoing EFAB advisories and reports under its Strategic Action Agenda. These advisories and reports address important environmental financing issues including brownfields redevelopment, private sector participation in delivering environmental services, financing tools to pay for community-based environmental protection, and funding options for drinking water systems.

The meeting will be open to the public, but seating is limited. For further information, please contact Eugene Pontillo, U.S. EPA on 202–260–6044, or Joanne Lynch, U.S. EPA on 202–260–1459.

Dated: January 23, 1997.

Peter Nobert,

Acting Director, Resource Management Division.

[FR Doc. 97–2323 Filed 1–29–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sale of U.S. Government Guaranteed Loans and Sale Premiums; Rescission of Policy Statement

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Rescission of policy statement.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is rescinding its policy statement on the Sale of U.S. Government Guaranteed Loans and Sale Premiums (Policy Statement). The Policy Statement provides guidance to state nonmember banks purchasing or selling loans guaranteed by the U.S. government. The FDIC is rescinding the Policy Statement because it is outmoded and duplicative.

DATES: This Policy Statement is rescinded January 30, 1997.

FOR FURTHER INFORMATION CONTACT: William A. Stark, Assistant Director, (202/898–6972), Kenton Fox, Senior Capital Markets Specialist, (202/898–7119), Division of Supervision; Jamey Basham, Counsel, (202/898–7265), Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires the FDIC, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision (federal banking agencies) to each streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each of the federal banking agencies to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that the Policy Statement is outmoded and duplicative, and that the FDIC's written policies can be streamlined by its elimination.

The Federal Financial Institutions Examination Council (FFIEC) developed the Policy Statement to provide general supervisory guidance to insured depository institutions that originate, purchase, or sell loans guaranteed by the U.S. government. The Policy Statement also provides guidance on the accounting treatment of servicing fees and premiums associated with these loans. Each of the federal banking agencies adopted the Policy Statement, with the FDIC's original adoption taking place on December 3, 1979, and the adoption of certain amendments taking place on April 15, 1985. 1 FDIC Law, Regulations, and Related Acts'' (FDIC) 5257 (1996).

In the time since the Policy Statement was adopted, the market in government-guaranteed loans has become more established and well-known, and insured depository institutions have gained experience in dealing with it. The supervisory guidance contained in the Policy Statement, which is very general in nature, is no longer necessary in light of this experience. The accounting guidance in the Policy Statement is also no longer necessary in light of subsequent clarifications in the Instructions for Preparing Reports of Condition and Income, and Financial Accounting Standards Board Statement 91.

Section 303(a) of the CDRI also requires the federal banking agencies to work jointly towards uniformity of guidelines implementing common supervisory policies. FFIEC has determined that the Policy Statement is no longer necessary in light of the above reasons, and the other federal banking agencies will also take action to rescind the Policy Statement.

For the above reasons, the Policy Statement is rescinded.

By order of the Board of Directors.

Dated at Washington, DC, this 21st day of January, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–2321 Filed 1–29–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act; Meeting

AGENCY: Federal Election Commission.

* * * * *

DATE AND TIME: *Tuesday, February 4, 1997 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matter affecting a particular employee.

* * * * *

DATE & TIME: *Thursday, February 6, 1997 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
1997 Legislative Recommendations.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–2490 Filed 1–28–97; 2:55 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following

agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 203–011394–003.

Title: VSAO Agreement.

Parties:

Orient Overseas Container Lines

The VSA Parties:

Sea-Land Service, Inc.

P & O Nedlloyd Limited

P & O Nedlloyd B.V.

Synopsis: The proposed Agreement provides that the Agreement will continue in effect until the date of termination of FMC Agreement No. 203–011171.

By order of the Federal Maritime Commission.

Dated: January 24, 1997.

[FR Doc. 97–2246 Filed 1–29–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 13, 1997.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Frank Phillips Giltner III, Omaha, Nebraska; to acquire an additional 60 percent, for a total of 100 percent, of the voting shares of The Avoca Company, Avoca, Nebraska, and thereby indirectly acquire Farmers State Bank, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, January 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2281 Filed 1–29–97; 8:45 am]

BILLING CODE 6210–01–F

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 14, 1997.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. John William Lowry, Ada, Oklahoma; to acquire an additional 19.70 percent, for a total of 39.18 percent, and Denzil Floyd Lowry, Jr., Ada, Oklahoma, to acquire an additional 19.70 percent, for a total of 35.44 percent, of the voting shares of Oklahoma State Bancorporation, Inc., Ada, Oklahoma, and thereby indirectly acquire Oklahoma State Bank, Ada, Oklahoma.

Board of Governors of the Federal Reserve System, January 27, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2340 Filed 1–29–97; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. 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 standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company 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'' (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 24, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Union Corporation, Charlotte, North Carolina; to acquire 100 percent of the voting shares of Boca Raton First National Bank, Boca Raton, Florida.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Community Bankshares, Inc., Denver, Colorado; to acquire 100 percent of the voting shares of First Western National Bank, La Jara, Colorado.

Board of Governors of the Federal Reserve System, January 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2280 Filed 1–29–97; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. 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 standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company 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'' (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Amboy Bancorporation, Old Bridge, New Jersey; to acquire 9.9 percent of the voting shares of The Community Bank of New Jersey, Freehold, New Jersey (in organization).

B. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. F.N.B. Corporation, Hermitage, Pennsylvania, and Southwest Banks, Inc., Naples, Florida; to acquire 100 percent of the voting shares of West Coast Bancorp, Inc., Cape Coral, Florida, and thereby indirectly acquire First National Bank of Southwest Florida, Cape Coral, Florida.

C. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Regions Financial Corporation, Birmingham, Alabama; to merge with West Carroll Bancshares, Inc., Oak Grove, Louisiana, and thereby indirectly acquire West Carroll National Bank of Oak Grove, Oak Grove, Louisiana.

D. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Peoples Bancorp, Inc., Chestertown, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank of Kent County, Maryland, Chestertown, Maryland.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. FirstBank Holding Company of Colorado, Lakewood, Colorado; to acquire 100 percent of the voting shares of FirstBank of Evergreen, Lakewood, Colorado.

Board of Governors of the Federal Reserve System, January 27, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2339 Filed 1–29–97; 8:45 am]

BILLING CODE 6210–01–F

Signet Banking Corporation, Richmond, Virginia; Notice to Engage in Certain Nonbanking Activities

Signet Banking Corporation, Richmond, Virginia (Notificant), has provided notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 USC 1843(c)(8)) (BHC Act) and § 225.23 of the Board's Regulation Y (12 CFR 225.23) of its intention to acquire 49.99 percent of a limited liability company (tentatively to be titled ''SoHo CFO, L.L.C.'') (Company), a *de novo* joint venture with United Video Satellite Group, Inc., Tulsa, Oklahoma, and thereby engage in certain data processing and transmission activities pursuant to § 225.25(b)(7) of Regulation Y (12 CFR 225.25(b)(7)), management consulting to depository institutions pursuant to § 225.25(b)(11) of Regulation Y (12 CFR 225.25(b)(11)), and related incidental activities. Company proposes to conduct these activities nationwide.

Notificant proposes that Company develop and maintain a Web site (''SoHo Web site''), accessible via the Internet, targeted to business owners and managers, with particular emphasis on small office and home office businesses. In this regard, Company would provide an electronic interface or communications gateway through which customers could: (1) obtain information on and access, via the Internet, business banking or financial services offered by Notificant and its banking and nonbanking subsidiaries; (2) obtain information on and access, via the Internet, business banking and financial services provided by other depository institutions; and (3) obtain information on and access Internet sites of selected providers of other financial products or services, including payroll, insurance, retirement planning, and investment and brokerage services, and financial educational information. Company also would advise participating depository institutions on the design and implementation of their Home Pages on the SoHo Web site and electronic commerce initiatives, as well as provide marketing and technical support to these institutions. Customers also would be able to effectuate payments for products and services through Company's system by using credit cards or an ''electronic wallet'' made available by a third party provider. Company also would engage in various activities which it maintains are incidental to the foregoing, including the provision of information on and access to, via the Internet, nonfinancial business products and services (such as office supply, marketing, and human resources products and services), making available to its customers the Internet acces30products and services of third party providers, and offering on-line access to business educational information.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing in the case of an acquisition of a savings association, has determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is

likely to meet, the standards of the BHC Act.

Any comments must be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 13, 1997.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, January 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2284 Filed 1–29–97; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice 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 the proposal complies with the standards of section 4 of the BHC Act, including 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'' (12 U.S.C. 1843). 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 February 13, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Republic Bancshares, Inc., St. Petersburg, Florida; to acquire Firstate Financial, F.A., Orlando, Florida, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. The proposed activity will be conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, January 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2282 Filed 1–29–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EST), February 10, 1997.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the January 13, 1997, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of investment policy.
4. Review of KPMG Peat Marwick audit report: ''Pension and Welfare Benefits Administration Review of Thrift Savings Plan C and F Fund Investment Management Operations at Barclays Global Investors, N.A.''

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 28, 1997.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 97–2461 Filed 1–28–97; 2:46 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Arthritis Advisory Committee

Date, time, and place. February 4, 1997, 8:30 a.m., and February 5, 1997, 8 a.m., Gaithersburg Hilton, Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, February 4, 1997, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; open public hearing, February 5, 1997, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 5 p.m.; Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, FAX: 301–443–0699, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Arthritis

Advisory Committee, code 12532. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 31, 1997, 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.

Open committee discussion. On February 4, 1997, the committee will hear presentations and discuss data submitted regarding the safety and efficacy of new drug application (NDA) 50–735, Neoral® (cyclosporine, Sandoz) soft gelatin capsules and oral solution for microemulsion, for the treatment of severe rheumatoid arthritis. On February 5, 1997, the committee will review, discuss, and critique the draft document ''Guidance for Industry. Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA),'' including Juvenile Rheumatoid Arthritis (JRA). This draft document is available for inspection in docket 96D–0067 at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, 301–443–7542.

FDA regrets that it was unable to publish this notice 15 days prior to the February 4, 1997, and February 5, 1997, Arthritis Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Arthritis Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. February 27 and 28, 1997, 8:30 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD. Parking in the Clinical Center visitor area is reserved for Clinical Center patients and their visitors. If you must drive, please use an outlying lot such as Lot 41B. Free shuttle bus service is provided from Lot 41B to the Clinical Center every 8 minutes during rush hour and every 15 minutes at other times.

Type of meeting and contact person. Open public hearing, February 27, 1997, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5:30 p.m.; open committee discussion, February 28, 1997, 8:30 a.m. to 5:30 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), 419–259–6211, or Mae Brooks (HFD–21), 301–443–5455, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Cardiovascular and Renal Drugs Advisory Committee, code 12533. Please call the hotline for information concerning any possible changes.

General function of committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 13, 1997, 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.

Open committee discussion. On February 27, 1997, the committee will discuss: (1) NDA 20–727, BiDil® (hydralazine HCl/isosorbide dinitrate tablets, Medco Research, Inc., to be indicated for treatment of chronic congestive heart failure as an adjunct to standard therapy in patients intolerant to or having contraindications to angiotensin converting enzyme (ACE) inhibitor therapy; and (2) NDA 20–297, Coreg™ (carvedilol, SmithKline Beecham), to be indicated for the treatment of moderate, chronic congestive heart failure. On February 28, 1997, the committee will discuss: (1) NDA 20–689, Posicor™ (mibefradil, Hoffmann La Roche), to be indicated for hypertension and angina; and (2) NDA 20–718, Integrilin® (intrifiban, COR Therapeutics, Inc.), to be indicated as adjunct therapy to aspirin and heparin in patients undergoing percutaneous transluminal coronary angioplasty for prevention of acute cardiac ischemic complications related to abrupt closure of treated coronary vessels.

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 the meeting(s) 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 (a)(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: January 24, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–2297 Filed 1–29–97; 8:45 am]

BILLING CODE 4160–01–F

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.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Antiviral Drugs Advisory Committee

Date, time, and place. February 21, 1997, 8:30 a.m., Gaithersburg Hilton, Potomac and Rockville Suites, 620 Perry Pkwy., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; closed committee deliberations, 9:30 a.m. to 4 p.m.; Rhonda W. Stover or John B. Schupp, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Antiviral Drugs Advisory Committee, code 12531. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 13, 1997, 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.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug applications and drug development plans. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above 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. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) 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, 5600 Fishers Lane, rm. 12A–16, 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,

12420 Parklawn Dr., rm. 1–23, 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.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (a)(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: January 23, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–2338 Filed 1–29–97; 8:45 am]

BILLING CODE 4160–01–F

Open Meeting for Representatives of Health Professional, Consumer, and Patient Advocacy Organizations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting with representatives of health professional, consumer, and patient advocacy organizations. The meeting will be chaired by Sharon Smith Holston, Deputy Commissioner for External Affairs. The topic will be FDA's final regulation restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents. The purpose of this meeting is to provide an opportunity for representatives of health professional, consumer, and patient advocacy groups, and other interested persons to be briefed by senior FDA staff and to provide an opportunity for informal discussion regarding FDA's final regulation governing access to and promotion of cigarettes and smokeless tobacco to protect children and adolescents.

DATES: The meeting will be held on Monday, February 10, 1997, from 9 a.m. to 12 m.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Betty B. Palsgrove, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1652.

There is no registration fee for this meeting, however, space is limited. Interested persons will be registered in the order in which calls are received. Please call the contact person listed above to register. Registrations also may be transmitted by FAX at 1–800–344–3332 or 301–443–2446. Please include the name and title of the person attending and the name of the organization being represented.

Dated: January 24, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–2337 Filed 1–29–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA–644]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Intake and Assessment survey package for the Community Nursing Organization Demonstration; *Form No.:* HCFA–644; *Use:* The Omnibus Reconciliation Act of 1987 section 4079 requires the Secretary of Health and Human Services (HHS) to conduct a demonstration project, testing capitated payment for community nursing and ambulatory care services (primarily Medicare-covered home health services, medical devices and durable medical equipment, and certain ambulatory care) provided to Medicare beneficiaries by community nurse organization sites. This aspect of the demonstration is aimed at replacing the multiple payment mechanisms, such as reasonable cost, predetermined fee schedules, and usual, customary, and

prevailing costs, which exist currently; *Frequency:* Annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 11,300; *Total Annual Responses:* 11,300; *Total Annual Hours:* 6385.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 23, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–2277 Filed 1–29–97; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Program Announcement for a Cooperative Agreement To Initiate an Interdisciplinary Center for Community-Based Learning

The Health Resources and Services Administration (HRSA) announces the awarding of a sole source cooperative agreement to the Association of Academic Health Centers to plan for and implement an Interdisciplinary Center for Community-Based Learning. This activity will be supported under the authority of Title III, Section 301, of the Public Health Service Act. A proposed three-year period of support beginning in fiscal year 1997 is anticipated with approximately $100,000 per year.

The project will (1) strengthen and institutionalize the academic health centers commitment to interdisciplinary community-based learning, particularly in under served community settings, (2) provide expertise to academic health centers in regard to model interdisciplinary community-based curricula and training sites, and (3) support an interdisciplinary network of health care professionals working to create and strengthen an interdisciplinary community-based curriculum.

The Association of Academic Health Centers was chosen because it is the recognized professional association representing academic health centers, with a mission that ''seeks to explore and study issues that relate to greater coordination of health-related schools and programs, both within and among institutions, interdisciplinary and multiprofessional concerns.''

It also has previously established relationships with several multiprofessional groups and associations which are actively developing an agenda for interdisciplinary community-based learning and have ready access to information regarding all interdisciplinary community-based training programs at academic health centers in the country.

Federal Involvement

The Cooperative Agreement mechanism is being used for this project to allow for substantial Federal programmatic involvement with the planning, development, administration, and evaluation of the Interdisciplinary Center for Community-Based Learning.

Requests for Additional Information

Requests for additional information regarding this sole source cooperative agreement should be directed to: Sue Hassmiller, Ph.D., R.N., Bureau of Health Professions, Room 8–05, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301)443–6700, Fax: (301)443–2111, Email: shassmiller@hrsa.dhhs.gov

Dated: January 23, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–2292 Filed 1–29–97; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Proposed Recommendations of the Task Force on Genetic Testing; Notice of Meeting and Request for Comment

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Task Force on Genetic Testing was created by the National Institutes of Health (NIH)-Department of Energy (DOE) Working Group on Ethical, Legal, and Social Implications of Human Genome Research to make recommendations to ensure the development of safe and effective genetic tests, their delivery in laboratories of assured quality, and their appropriate use by health care providers and consumers. The Task Force reviewed genetic testing in the United States, promulgated interim principles consonant with its goals (''Interim Principles'', available at http://ww2.med.jhu.edu/tfgtelsi), and has taken public comments into consideration in revising them. Over the past eight months the Task Force has discussed policies to implement several of its principles. It now submits proposed recommendations for public comment. These proposed recommendations are available at http://ww2.med.jhu.edu/tfgtelsi.

DATES: To assure consideration by the Task Force, comments must be received on or before March 10. The Task Force will meet on March 17 from 8:00 a.m. to recess and on March 18 from 8:00 a.m. to adjournment at approximately 12:00 noon. The meeting will take place at the Doubletree Inn at the Colonnade, 4 West University Parkway, Baltimore, Maryland, (410) 235–5400. Time permitting, guests will have the opportunity to speak on comments already submitted, but no formal time is being set aside. A final report, including the principles and recommendations, together with background information and comments, will be issued shortly after the meeting.

ADDRESSES: Written comments should be sent to Neil A. Holtzman, M.D.,M.P.H., Genetics and Public Policy Studies, The Johns Hopkins Medical Institutions, 550 N. Broadway, Suite 511, Baltimore MD, 21205–2004, faxed to Dr. Holtzman at 410–955–0241, or e-mailed to tfgt-a@welchlink.welch.jhu.edu. Individuals who plan to attend the March 17–18 meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Holtzman in advance of the meeting.

Background

Scientific breakthroughs have greatly accelerated the discovery of genes which, when altered by mutation, result in disease or in increased risk of disease. When these mutations occur in the germline (sperm or egg), they can be passed from one generation to the next. These basic research discoveries lead readily to the development of tests for inherited mutations. The number of DNA-based genetic tests and the volume of testing are increasing steadily. This has been accomplished in part by the work of the new biotechnology industry.

Aware of the potential for harm as well as benefits, the National Center for Human Genome Research (NCHGR/NIH) set aside from its inception a portion of its appropriation for consideration of ethical, legal, and social implications of human genome research. As part of its joint program with NCHGR, the Department of Energy (DOE) also set aside a portion of its appropriation. This initiative to anticipate problems in order to maximize benefits and prevent or minimize harm, of which the Task Force on Genetic Testing is one activity, is unprecedented in the development and application of new biomedical technologies. The principles and recommendations of the Task Force represent an attempt to build on successes and prevent problems of the past and present from continuing in the future. Some past and present problems will be described in the final report of the Task Force.

For the most part, genetic testing in the United States has developed successfully, providing more options for avoiding, preventing, and treating inherited disorders. This success is largely the result of testing being undertaken in genetic centers or in consultation with geneticists and genetic counselors. In the next few years, the use of genetic testing is likely to expand rapidly while the number of genetic specialists will remain essentially unchanged. This means that a greater burden for making genetic testing decisions will fall on providers who have had little formal training or experience in genetics. The problems they will encounter in providing genetic tests are seldom encountered in other areas of medicine.

- Much of medical practice and medical testing is provided for people who are already ill. Genetic testing will increasingly be used to predict risks of future disease in healthy people. Telling healthy people about future risks can heighten uncertainty and cause psychological distress.
- For many other disorders, interventions are available to cure, prevent or ameliorate the condition. This is not the situation for many disorders for which genetic testing is possible. Positive results of some tests confront patients with difficult reproductive decisions. These are personal decisions that should not be unduly influenced by providers or society.
- Few other tests provide information on the risk of future disease to healthy relatives of the person being tested. Providers have little guidance in communicating genetic risks to relatives and, simultaneously, keeping results confidential.
- Differences in the frequency of disease-related mutations among ethnic groups can influence the appropriateness of providing some genetic tests, and heighten concern about discrimination and stigmatization.

In addition, the predictions made by genetic tests are not always certain and often no independent test is available to confirm the prediction. Test uncertainty is not unique to genetic tests. However, the psychological and physical effects of testing are often greater for imperfect genetic tests when no treatment is available or when interventions of unproven efficacy are life-long or irreversible.

Key Principles

The Task Force enumerated principles to address many of the problems raised by predictive genetic tests. Its proposed recommendations are an effort to implement several of these principles, highlighted below:

Validity and Utility of Genetic Tests

- Before a genetic test can be generally accepted in clinical practice, data must be collected to demonstrate the benefits and risks that accrue from both positive and negative results. The primary responsibility for data collection falls on test developers. For many tests, however, data collection must continue after tests are introduced into practice.
- Protocols for the clinical validation of genetic tests must receive the approval of an institutional review board (IRB). At present, IRBs have the principal responsibility for the protection of subjects participating in validation studies. The Task Force is concerned that current limitations of IRBs might impair review of genetic testing protocols.

Laboratory Quality and Certification

- A national accreditation program for laboratories performing genetic tests, which includes on-site inspection and proficiency testing, is needed to promote standardization across the country. Although most laboratories providing clinical laboratory tests are certified under the Clinical Laboratory Improvement Amendments (CLIA) of 1988, current regulations do not adequately ensure the quality of genetic testing. Professional organizations have developed more appropriate quality assessment of genetic tests than is required under CLIA, but laboratories performing genetic tests are not required to use these voluntary accreditation mechanisms.

Professional Competence in Genetics

- Health care professionals involved in the provision of genetic tests should be well-informed about their implications, benefits and risks. Students preparing for careers in health care and current health care providers themselves are not being taught enough about human genetics and genetic testing. Consequently, not all providers in practice today may have adequate competence to offer and interpret genetic tests. Related problems are the lack of standards for formal assessment of new genetic testing technologies and the limited impact of current efforts to establish clinical guidelines for when and how genetic tests should be offered.

Rare Genetic Diseases

- The development and maintenance of tests for rare genetic diseases must be encouraged. At a time when genetic tests for common complex disorders are increasing, tests for rare disorders may be developed at a slower rate than in the past. Some that have been available may be more difficult or impossible to obtain. Many physicians do not have access to the best available information and resources to identify and manage rare diseases, or know where to turn for help.

Informed Consent and Confidentiality

- Informed consent for a validation study must be obtained whenever the specimen can be linked to the subject from whom it came. When specimen identifiers are retained in either coded or uncoded form, the opportunity exists of being able to contact subjects even if the intent of the original protocol is not to do so.
- Health care providers must describe the features of the genetic test, including potential consequences, to potential test recipients prior to the initiation of predictive testing in clinical practice. Individuals considering genetic testing should be told the purposes of the test, the chance it will give a correct prediction, the implications of test results and the options, and the benefits and risks of the process. The responsibility for providing information to the individual lies with the referring provider, not with the laboratory performing the test.
- It is unacceptable to coerce or intimidate individuals or families regarding their decision about genetic testing. Respect for personal autonomy is paramount. People being offered testing must understand that testing is voluntary. Whatever decision they make, their care should not be jeopardized. Information on risks and

benefits must be presented fully and objectively. A non-directive approach is of the utmost importance when reproductive decisions are a consequence of testing or when the safety and effectiveness of interventions following a positive test result have not been established. Obtaining written informed consent helps to assure that the person agrees to testing voluntarily.

• Results should be released only to those individuals to whom the test recipient has consented or subsequently requested in writing. Means of transmitting information should be chosen to minimize the likelihood that results will become available to unauthorized persons or organizations. Under no circumstances should results be provided to any outside parties, including employers, insurers, government agencies, without the test recipient's written consent. Unless potential test recipients can be assured that the results will not fall into unauthorized hands, some will refuse testing for fear of losing insurance or employment.

• Health care providers have an obligation to the person being tested not to inform other family members without the permission of the person tested except in extreme circumstances. Disclosure by providers to other family members is appropriate only when the person tested refuses to communicate information despite reasonable attempts to persuade him or her to do so, and when failure to give that information has a high probability of resulting in irreversible or fatal harm to the relative. When test results have serious implications for relatives, it is incumbent on providers to explain to people who are tested why they should communicate the information to their relatives.

Recommendations

A Genetics Advisory Committee

The Task Force joins the NIH–DOE Joint Committee to Evaluate Ethical, Legal, and Social Implications Program of the Human Genome Project in recommending that the Secretary of Health and Human Services (HHS) create, in the Office of the Secretary, a federally chartered Advisory Committee on Genetics and Public Policy (hereafter the Advisory Committee) whose members should include the stakeholders in genetic testing. The Secretary should establish formal liaison between the Advisory Committee and an already-established HHS interagency group considering policies of the Department relevant to the development and provision of genetic tests. In addition to assisting the Advisory Committee, this interagency group should develop coordinated and consistent genetic testing policies in the Department. The two committees whose creation is recommended later in this document, one to advise the Food and Drug Administration (FDA) on assuring the validity and utility of new genetic tests, the other to advise the Clinical Laboratory Improvement Advisory Committee on assuring the quality of laboratories performing genetic tests, should report to the Advisory Committee through the interagency group.

Need for Interim Action

The Task Force recognizes that the formation of the Advisory Committee could take some time. It is also aware that organizations have on occasion developed and offered genetic tests without always collecting data on test validity and utility and without external review. Consequently, the public is not being adequately protected.

The Task Force recommends that the Secretary of HHS use existing agencies and policies to ensure that the public will have adequate protection from predictive genetic tests that have not been adequately validated and whose clinical utility has not been established. It suggests two possibilities:

(1) FDA uses its acknowledged authority under the Medical Device Amendments of 1976 (21 USC 321–392) to the Food, Drug, and Cosmetic Act (21 USC 301–392), to ensure that *all* organizations developing new, predictive genetic tests submit protocols to an institutional review board (IRB).

(2) The Health Care Financing Administration (HCFA) establish policies under Medicare and Medicaid to reimburse for certain genetic tests (see below) only when they are performed in laboratories that can provide evidence that (a) the test has been clinically validated (based on published information or information provided by the test developer) or that it is participating in a systematic validation plan, and (b) they are qualified to provide such tests (see below, Laboratory Quality). Once HCFA adopts such policies it is likely that other third-party payers will quickly follow.

The Task Force makes a similar recommendation to the Department of Defense for reimbursement under the Civilian Health and Medical Program Uniform Services (CHAMPUS).

The need for stringent scrutiny of certain predictive genetic tests. The Task Force has sought to find ways to identify tests that are more likely to pose significant risks in their developmental stage and when they enter clinical practice. It recognizes that existing resources for scrutinizing tests are limited. Consequently, the Task Force has attempted to identify characteristics of tests and diseases that raise the greatest concern and can be used to prioritize tests for stringent scrutiny. These characteristics include, but are not necessarily limited to:

• *A test's potential for predicting serious future disease in healthy people (or their offspring).* Even if a test developer's intended use of the test may not be for predictive purposes, the potential for such use, as is the case for DNA-based genetic tests, increases the level of scrutiny needed. The absence of a confirmatory test heightens the scrutiny a test needs.

• *Test uncertainty.* When *only* healthy people with positive test results will develop the disease and when all people with positive results will develop it, less scrutiny is needed than when these conditions are not fulfilled.

• *The safety and effectiveness of clinical interventions in those with positive test results of predictive tests.* Unless the safety and effectiveness of clinical interventions for those with positive test results have been established, people who test positive cannot be confident that interventions will prevent the disease or improve its outcome if it does occur.

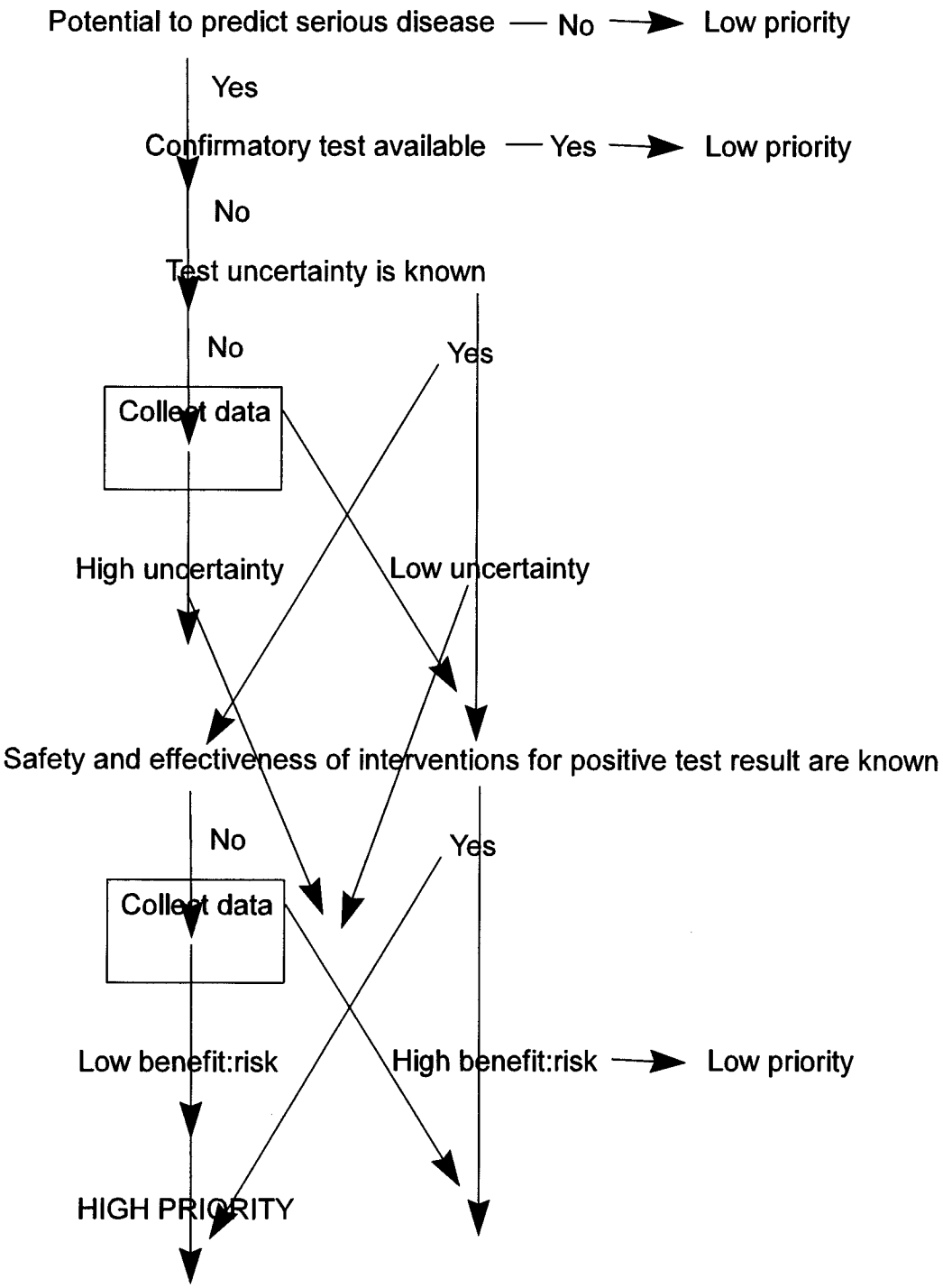
Other characteristics that might play a role in prioritizing are: the frequency of occurrence of the disorder(s) detected by the test under review, the use of the test for population screening, whether the disorder(s) detected occur more frequently in some ethnic groups than others, and whether the reliability of the test under routine clinical laboratory conditions has been established.

There are several junctures at which these characteristics should be applied to specific tests. The first occurs in the review of protocols for investigating the validity and utility of new tests. Subjects participating in trials or pilot programs to establish validity and utility must be adequately protected, particularly when they will be notified of the results or simply when personal identifiers will be retained with the specimens. The protocol must have sufficient scientific merit to justify the participation of subjects. The characteristics provided above could be used by IRBs as a checklist to make sure that the protocol addresses important issues in test development. For instance, if applicants fail to present data on test uncertainty, they should be required to supply that information or, if it is unavailable, to collect the requisite data. A grading system could be devised so that protocols exceeding a certain score would be designated as requiring ''stringent scrutiny.'' Alternatively, the characteristics can be layered in an

algorithm or decision tree. (See Figure) For instance, if a test has the potential to predict future disease and there is no confirmatory test, the next step in deciding whether it needed stringent scrutiny would be the extent of test uncertainty. If this was unknown, data collection would be needed. Once data were collected, the next question is the safety and effectiveness of interventions in those with positive results. If the benefit:risk ratio of intervention is high and test uncertainty is low, the test would not require close scrutiny. Even if test uncertainty is low, close scrutiny would be needed if the safety and effectiveness of interventions had not been established.

BILLING CODE 4140–01–P

Algorithm for Prioritizing the Scrutiny of Genetic Tests



BILLING CODE 4140–01–C

The second juncture occurs when a test developer believes the test is appropriate for clinical use. Review by an organization independent of the developer is needed to ensure that the public will benefit from the test. The Task Force is concerned that the number of tests might overwhelm external review processes and needlessly delay the availability of tests of potential benefit. To reduce the likelihood of backlogs, the criteria should be used to set priorities for stringent scrutiny. Tests of low priority would enter clinical practice without scrutiny but could be considered again at the third juncture.

The third juncture occurs when the test is clinically available and there are concerns that (1) it will not be used when it is indicated, (2) it will be used for inappropriate indication(s), or (3) that more data on validity and utility are needed. The same set of criteria can be used to set priorities for post-marketing surveillance requirements and establishing guidelines for test use.

The Task Force recognizes that as information and experience is gained, the scrutiny a test needs is likely to diminish. As further scientific and technical advances occur, other criteria may become more important and other types of tests may then need stringent scrutiny.

Assuring the Validity and Utility of New Genetic Tests

The Task Force is concerned that the high workload of IRBs, their variability in community representation, in evaluating protocols, and in expertise germane to the review of genetic tests, as well as the conflicts of interest that can arise in local review, impairs current review of genetic tests that warrant stringent scrutiny. The Task Force urges the Office of Protection of Human Subjects from Research Risks, with input from the proposed Advisory Committee, to address these problems. The Task Force is also concerned that organizations that do not use federal funds for the research and development of genetic tests that will be marketed as services may not seek outside review from an independent IRB. The Task Force is also concerned that data needed after tests enter clinical practice may not be collected.

The Task Force urges the proposed Advisory Committee to recommend to the Secretary the creation of a National Genetics Board (NGB) whose goal would be to assure the protection of human subjects in the development of genetic tests with the potential to predict future disease. NGB members should be broadly representative of stakeholders in genetic testing, including but not limited to test developers (manufacturers and clinical laboratories), consumers, professional societies, health care providers, and insurers. Some of its members must be scientists capable of reviewing scientific protocols. The Board should have its own staff.

NGB would develop a checklist that would enable local IRBs to identify protocols that meet criteria for stringent scrutiny. NGB would function along the lines of one of the following models, each of which each has advantages and disadvantages. The Task Force did not reach consensus on which model NGB should follow. The Task Force is especially interested in public comments on the alternatives.

(1) NGB reviews all protocols requiring stringent scrutiny. This assures that expert assessment with broad input will be consistently obtained and conflicts of interest will be minimized. However, if local IRBs also review protocols before or after they are sent to the NGB, funding or activation of the protocols could be delayed. NGB approval would be required before federal funds are awarded. NGB should also be available to review protocols from commercial organizations developing genetic tests without federal funds.

(2) NGB has the discretion to choose which protocols among those in need of stringent scrutiny it will review. Those protocols which NGB elects not to review will be sent back to the local IRB for review. Based on its selective review, NGB will issue advisories to local IRBs to assist them in the review of similar protocols. Under this model, the advantages of the first model are reduced, but so is NGB's work load; local IRBs retain greater authority. Delays are likely as protocols move between local IRBs and NGB.

Under both model (1) and (2), local IRBs could also request NGB review of other genetic testing protocols. Based on its available resources and backlog, NGB could decide whether or not to review these protocols. NGB could also assume responsibility for the primary review for the protection of human subjects of multi-center and other collaborative studies for the validation of genetic tests.

(3) NGB focuses on generic policy issues and sets general guidelines for review. It is available for consultation and advice, but has no mandatory review function. Protocols that a local IRB believes raises novel and problematic issues could be sent to NGB for analysis and comment. The advantages and disadvantages of this approach are similar to those described for the second model; the likelihood of consistent review is further reduced, but as review is entirely the responsibility of the local IRBs, delays are less likely.

Role of FDA. The Task Force recognizes that developers of genetic tests who do not rely on federal funds are under no legal obligation to submit protocols to the proposed NGB and have not always obtained IRB approval for validation protocols of tests they plan to market as laboratory services. If tests requiring stringent scrutiny were regulated by FDA, even if they were to be marketed as services, then under existing regulations (21 CFR part 56), protocols for clinical validation would have to be submitted to an IRB regardless of whether they came from federally-funded organizations or not. Although the FDA acknowledges its authority under the Medical Device Amendments to regulate genetic tests marketed as services, it has chosen not to do so. (Under the CLIA, clinical laboratories must demonstrate analytical validity of their tests but there is no statutory or regulatory requirement for them to establish the clinical validity or utility of clinical laboratory tests.)

The Task Force recommends that FDA:

(1) Establish a Genetics Advisory Panel under the Medical Devices Amendments (21 USC 321–392) which would advise FDA on: (a) Strategies for prioritizing genetic tests; (b) the scientific, ethical, and social merits of applications FDA receives for marketing genetic tests; and (c) other matters germane to genetic testing. In carrying out its first function, this panel could consult with the proposed NGB if it is established, but it should not delay formulating its strategies until that time.

(2) Adopt a strategy to prioritize predictive genetic tests according to the degree of scrutiny they need.

(3) Publicize the requirements it develops for tests requiring stringent scrutiny.

(4) Require that new genetic tests meeting criteria for stringent scrutiny be regulated under the Medical Device Amendments (21 USC 321–392; 21 CFR parts 200 *et seq.*) regardless of whether their sponsor's intention is to market them as services or as kits.

Although a majority of the Task Force supported all of these recommendations, a consensus was not reached on the fourth. The Task Force is especially interested in public comments on this recommendation.

Data collection. The data needed to definitively establish the validity and utility of a genetic test may take so long to collect that if test developers could

not market their tests they would be deterred from developing them. Data collection is also a problem for rare genetic diseases for which data from several sources will have to be collected to establish the validity and utility of testing. Without a formal plan and procedure for prospective data collection, data will undoubtedly be lost and the time to reach definitive conclusions will be prolonged.

The Centers for Disease Control and Prevention (CDC), in cooperation with NCHGR, should expand the monitoring of genetic disorders in order to provide data on the validity of tests and post-test interventions. It should establish procedures for tracking healthy individuals with positive test results, as well as those diagnosed with inherited disorders, to learn more about (1) test validity, (2) the natural history of such disorders, and the (3) safety and effectiveness of interventions. The collection of this data should be undertaken in cooperation with local providers and consultants in genetics and other relevant specialties. At all times the confidentiality of the data collected must be protected.

For tests for which long periods of data collection are needed, FDA should grant conditional premarket clearance or approval before all necessary data are collected to make promising new technologies available to the public and enable test developers to obtain an adequate return on their investment in test development. Developers would be responsible for continuing to collect data as in the premarket phase and make it available to FDA. When sufficient data are collected, FDA will decide whether or not to grant unconditional approval. Conditional premarket approval should be granted to tests when FDA considers it likely that the test will prove to make an important contribution to the prevention or management of the disorder. Under this circumstance, third-party payers, including government programs such as Medicare, Medicaid, and CHAMPUS, should reimburse for the test once it has been conditionally approved. Managed care organizations should also cover tests given conditional approval.

Technology assessment. Many tests currently on the market have not been systematically validated nor subject to external review. New tests that go through these processes will be modified under clinical conditions.

Technology assessment is important to guide providers and consumers in the use of genetic tests, but is unlikely to be undertaken by existing technology assessment agencies because genetic tests do not entail huge expenditures of health care dollars. NGB should serve as a clearinghouse for technology assessments of genetic tests that are about to enter, or already are used in, clinical practice. It could secure and coordinate assessments of those technologies it considers in need of stringent scrutiny and coordinate assessments to avoid unnecessary duplication. NGB could also make recommendations on appropriate use of genetic tests with input from relevant professional societies as well as consumer groups.

Assuring Laboratory Quality

The Task Force is concerned about the lack of Federal law or regulation covering genetic tests except for cytogenetic tests, limitations of existing voluntary quality assurance and proficiency testing programs, inadequate assessment of the pre-and post-analytic phases of testing, and the absence of public information about laboratories satisfactorily performing genetic tests under existing voluntary assessments.

CLIA has no standards specific to genetic tests except for cytogenetics. Currently New York State requires certification of all laboratories performing clinical genetic tests on state residents. The College of American Pathologists/American College of Medical Genetics'' (CAP/ACMG) Molecular Pathology accreditation program is also designed to assess performance on the special problems of genetic tests, placing greater emphasis on the pre-and post-analytic phases of testing than other programs. However, CLIA-certified laboratories performing genetic tests are not required to be assessed by the CAP/ACMG program. If they are not, genetic tests could be accredited under CLIA without being specifically assessed. Furthermore, laboratories that participate in CAP/ACMG's Molecular Pathology program do so voluntarily and not under CAP's regulatory (''deemed'') authority under CLIA. (Under CLIA, HCFA has the authority to grant deemed status equivalence to an outside organization that has a quality assurance and proficiency testing survey program with standards equal to or greater than CLIA's. CAP's general proficiency testing program has been ''deemed'' equivalent by HCFA.) As CLIA has not established standards specifically for genetic tests, it has no authority to approve the CAP/ACMG Molecular Pathology program.

Differences between state law and Federal laws and regulations (and among different nations), create overlapping and often duplicative requirements for laboratories. The Task Force recommends that a national accreditation program of quality assurance and proficiency testing for genetic tests equivalent to or more stringent than those of New York State and CAP/ACMG, should be established under CLIA. This accreditation program should include proficiency testing and inspection of laboratories performing genetic tests. Quality assurance includes: (a) The skill and training of laboratory staff; (b) evidence of successful execution of the complex techniques involved in genetic testing to produce a correct and verifiable test result; and (c) assessment of pre-testing and post-analytic phases of testing.

Until such time as a national accreditation program is established under CLIA, the CAP/ACMG Molecular Pathology program, expanded to encompass all methods currently in use in genetic testing, might itself serve as the national program, and should be accessible to any laboratory providing clinical genetic testing. When a national program is established the CAP/ACMG Molecular Pathology program should have deemed status.

The Task Force recommends the establishment of a Genetics Advisory Committee to the Clinical Laboratory Improvement Advisory Committee (CLIAC) to help address the deficiencies of CLIA in assuring the quality of genetic tests. The work of this genetics committee should be reported to the Advisory Committee on Genetics and Public Policy through the interagency group previously discussed. The work of the proposed CLIAC advisory committee should also be coordinated with other HCFA programs, as well as FDA, CDC, and other Federal agencies involved setting genetic testing policies.

Pre-test education and post-test counseling components of clinical laboratory tests are critically important parts of the laboratory test to physicians who are not generally well informed about genetic tests. Preanalytic components include the information about the test that laboratories make available to providers and consumers and the informed consent documents and processes that laboratories may require. Postanalytic components include the information (interpretation) given with the test result and counseling services provided or arranged by laboratories. In any quality assurance program, closer scrutiny is needed of pre-and post-test analytic components of genetic testing than current assessment programs provide. The Task Force recommends that CAP/ACMG seek advice and input from consumer groups such as the Alliance of Genetic

Support Groups, as well as from the National Society of Genetic Counselors (NSGC), on standards for the quality of pre-and post-analytic components of genetic testing.

The Task Force recommends that CAP/ACMG periodically publish, and make available to the public, a list of laboratories performing genetic tests satisfactorily under its voluntary program. The Task Force recognizes that CAP is not currently required to publish, and has not published, the names of laboratories performing satisfactorily in the CAP/ACMG voluntary Molecular Pathology program. Until such time as a program is established under CLIA, publication will enable providers and consumers to select approved laboratories and will also serve as an incentive for laboratories to participate in the CAP/ACMG quality assessment program. This information should be disseminated using the Internet and other media accessible to consumers and providers.

Managed care organizations and other third-party payers should limit reimbursement for genetic tests to the laboratories on the published list of those satisfactorily performing genetic tests. Implementation of this recommendation will be especially important as more managed care organizations move to restrict access to laboratory services for their members to a single contracted laboratory (which may or may not be on the list of qualified laboratories).

The Task Force recommends that efforts should be made to harmonize international laboratory standards to assure the highest possible laboratory quality for genetic tests. At present, no mechanism exists to create international standards of laboratory quality and proficiency for genetic tests. Current United States regulations require any foreign laboratories performing clinical laboratory tests on U.S. residents to hold a CLIA certificate even if their nation's laboratory standards are more stringent that those of CLIA (e.g., as is the case with Canada).

Provider Competence

The Task Force wants to ensure that non-geneticist providers adequately appreciate many of the general issues that should be considered and discussed in offering, providing, and interpreting predictive genetic tests. These issues include: (1) Who should be offered a specific test; (2) the benefits and risks of each test; (3) the need for, and the content of informed consent, and how consent should be administered; (4) an explanation of test results; and (5) familiarity with genetic counseling strategies and principles. A provider's need for knowledge is particularly keen when tests are in transition from research to clinical use and when clinical utility is still under investigation and there are no established practice guidelines.

The Task Force endorses the recent establishment of a National Coalition for Health Professional Education in Genetics by the American Medical Association, the American Nurses Association, and the NCHGR. The Coalition should work in consultation with its member organizations, including non-genetics professional societies, to encourage the development of core curricula in genetics, with an emphasis on having individual professional organizations determine their own needs in the design and execution of the programs. It should also encourage input by consumers in the development of these curricula. The Coalition should serve as a registry of, and clearinghouse for, information about various curricula and educational programs, grants, and training pilot programs in genetics education. By providing educational resources, it should encourage professional societies to track the effectiveness of their respective educational programs. The Coalition should disseminate information on available programs in order to avoid inefficient duplication.

The Task Force strongly recommends that board examinations used for physician and specialty certification increase both the quality and the quantity of questions related to genetics. This should further stimulate the teaching of genetics to medical students, as well as residents in many specialties. The scores on these questions should serve as feedback to improve curricula.

Ultimately, implementation of these first two recommendations will improve the provision of care. The remaining recommendations are directed at short-term needs.

For those specialties which both require periodic passage of an examination for recertification and whose practitioners are likely to order predictive genetic tests, examinations for recertification should include questions on medical genetics and genetic testing, including predictive testing.

Hospitals and managed care organizations should use credentialing and other mechanisms (such as prior authorization) to limit the offering of certain predictive genetic tests to genetic health care professionals and physicians who have demonstrated their competence in dealing with the issues enumerated above. Successful completion of continuing education courses could be required to demonstrate competence. (The National Coalition for Health Professional Education in Genetics should be able to provide information on available programs for learning about the relevant issues.)

Predictive genetic tests requiring stringent scrutiny, as previously described, should be among those for which special credentials are needed. As professional experience is gained with tests for certain disorders, special credentialing may no longer be required, but other new genetic tests may take their place. Third-party payers could also establish policies that allow only properly credentialed providers to be reimbursed for their role in providing tests.

The Task Force is of the opinion that primary care providers and other non-geneticist specialists can and should be involved in genetic testing. However, they must first gain sufficient familiarity with the issues involved. In some cases, providers should work closely with genetic health care professionals who can serve as experienced repositories of in-depth information about many aspects of genetic testing. Several laboratories already require this collaboration. In this rapidly changing field, providers should maintain their knowledge of genetics throughout their professional lives.

Credentialing bodies such as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and the National Committee for Quality Assurance (NCQA) should assure that hospitals and other health care organizations develop continuous quality improvement programs focusing on genetic testing. Systematic and periodic medical record review, with feedback to providers, is one means of assuring appropriate use of genetic tests. Such review should assess the extent to which providers' records for frequently-ordered predictive genetic tests are in accord with per-determined criteria. These criteria should include, but not be limited to, appropriate indications for offering the test, offering the test when it is indicated, and documentation of: informed consent when appropriate, the test result, information given to the patient, and the patient's response. Mechanisms should be in place to assure that review procedures will not infringe on the confidentiality of the medical records.

Except when time is of the essence, such as with certain prenatal genetic tests, obtaining informed consent and actually performing the test should be

delayed several days after the test is offered and information given to the patient. This would give people considering testing the opportunity to absorb information about the test, contemplate the implications of testing, and discuss testing with others.

Rare Genetic Diseases

Physicians who encounter patients with symptoms and signs of rare genetic diseases should have access to the best available information about rare genetic diseases. This will enable them to include such diseases in their differential diagnosis, to know where to turn for assistance in clinical and laboratory diagnosis, and to find laboratories that test for rare diseases. The quality of laboratories providing tests for rare diseases must be assured, and a comprehensive system to collect data on rare diseases must be established. Although these are issues that relate primarily to the diagnosis of patients with symptoms and signs, they have major implications for predictive testing in asymptomatic relatives who may be at risk of disease or who are carriers of alleles for the disease and whose future children may be at risk.

The Task Force is aware of a number of efforts to address one or more of these issues, including the availability of disease-based databases on research projects by the NIH Office of Rare Diseases (ORD), on information for consumers and providers by the National Organization of Rare Disorders, the Alliance of Genetic Support Groups and its member organizations, and by the American Academy of Pediatrics, and on clinical laboratories providing tests through the Helix National Directory (available to providers only). In addition, the Society for Inherited Metabolic Disorders is compiling information for providers on diagnostic evaluations of rare disorders, and the ACMG is developing databases on tests that should be used for diagnosis of specific disorders.

The Task Force recommends that NIH give ORD a mandate to coordinate these public and private efforts to improve awareness of rare genetic diseases. Such coordination is important to avoid unnecessary duplication, to use expertise most efficiently and to address the concerns of the various groups. ORD could serve as a gateway for provider and public inquiries about these disorders.

In cooperation with other organizations, and on a regular basis, ORD should identify laboratories world-wide that perform tests for rare genetic diseases, the methodology employed, and whether the tests they provide are in the investigational stage, or are being used for clinical diagnosis and decision making. Laboratories should notify ORD about impending cessation of their testing so that provisions for a transition to other laboratories can be made.

ORD should also be responsible for assuring that tests for rare genetic diseases, which have been demonstrated to be safe and effective, continue to be available if and when their developers leave the field, and no other laboratory is prepared to offer the test, and/or the methodology is too complex to be readily adopted by other laboratories. The Task Force urges that additional funds be appropriated for ORD to undertake this expanded role.

In accordance with current law, the Task Force is of the opinion that any laboratory performing any genetic test on which clinical diagnostic and/or management decisions are made should be certified under CLIA. If specimens must be sent to a non-CLIA licensed research facility, the referring physician must be made aware of the investigative nature of the test.

The Task Force recognizes that the current CLIA certification process may place a heavy burden on some laboratories doing small numbers of diagnostic tests for rare diseases. Several laboratories currently performing these tests are primarily engaged in research, with the tests stemming from their research efforts. Without accommodation, some tests may cease to be available. Therefore, the Task Force recommends that the proposed Genetics Advisory Committee to CLIAC explore means to simplify compliance with CLIA without sacrificing quality, just as accommodations have been made for rare genetic disease testing within the New York State Department of Health laboratory permit process. Recognizing current deficiencies under CLIA in the assessment of genetic tests (discussed above), the Task Force also encourages CAP/ACMG to make its clinical accreditation programs available to low-volume laboratories that are unaffiliated with a hospital, and modify its procedures to accommodate such laboratories.

Directories of laboratories providing tests for rare diseases should indicate whether or not the laboratory is CLIA-certified and whether it has satisfied other quality assessments, such as the CAP/ACMG program.

The recommendation made earlier, calling on the CDC to expand its data monitoring capabilities, is intended to include rare diseases. Collecting data on rare diseases will require coordinating data from multiple sources. It is particularly needed to validate tests, describe the natural history of rare diseases and determine the safety and effectiveness of interventions to prevent disease or ameliorate its severity.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Elke Jordan,

Executive Secretary, National Advisory Council for Human Genome Research.

[FR Doc. 97–2286 Filed 1–29–97; 8:45 am]

BILLING CODE 4140–01–P

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, contact the SAMHSA Reports Clearance Officer at (301) 443–8005.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Mandatory Guidelines for Federal Workplace Drug Testing Program and Associated Forms—Extension of OMB approval will be requested for the Federal Custody and Control Form for Federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines, for the application and inspection forms for the National Laboratory Certification Program (NLCP), and for the reporting and recordkeeping language in the Guidelines. The Federal Custody and Control Form is used by all Federal agencies and employers regulated by the

Department of Transportation to document the collection and chain of custody of urine specimens at the collection site, for laboratories to report results, and for Medical Review Officers to make a determination. No changes are proposed to this form. Prior to an inspection, a laboratory is required to submit specific information regarding its laboratory procedures to allow inspectors to become familiar with a laboratory's procedures before arriving at the laboratory. The annual total burden estimates for the custody and control form, the NLCP application, the NLCP inspection checklist, and NLCP recordkeeping requirements is 1,517,935 hours, as shown below:

	Time per response	Number of responses	Total annual burden (hours)
Custody and Control Form:			
Donor	5 minutes	6,000,000	500,000
Collector	4 minutes	6,000,000	400,000
Laboratory	3 minutes	6,000,000	300,000
Medical Review Officer	3 minutes	6,000,000	300,000
Application	3 hours	5	15
Inspection Checklist	3 hours	140	420
Recordkeeping	250 hours	70	17,500
Total			1,517,935

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 24, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–2318 Filed 1–29–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–802636

Applicant: Parker Creek Ranch, San Antonio TX.

The applicant requests renewal of a permit to authorize interstate and foreign commerce, export, and cull of excess male barasingha (*Cervus duvauceli*), red lechwe (*Kobus leche*), and Eld's brow-antlered deer (*Cervus eldi*) from his captive herd for the purpose of enhancement of survival of the species. This notice shall cover a period of three years. Permittee must apply for renewal annually.

PRT–803337

Applicant: Thomas J. Moore, III, Ingram, TX.

The applicant requests renewal of a permit to authorize interstate and foreign commerce, export, and cull of excess male barasingha (*Cervus duvauceli*) from his captive herd for the purpose of enhancement of survival of the species. This notice shall cover a period of three years. Permittee must apply for renewal annually.

PRT–824266

Applicant: David C. Eldridge, Mt. Zion, IL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: January 24, 1997.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–2291 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–55–P

Emergency Exemption: Issuance

On January 22, 1997 the Fish and Wildlife Service (Service) issued a permit (PRT–824324) to SOS Care, Inc., CA, to export one neonate margay (*Leopardus weidii*) born 1/9/97 to Canada and reimport to the United States. The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the survival of the margay existed and that no reasonable alternative was available to the applicant. This animal was at risk because of the need to remove the animal from its mother due to weather extremes and lack of care and the need for constant care by experienced personnel during the initial 6 weeks of life.

Dated: January 24, 1997.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–2290 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–55–P

North American Wetlands Conservation Act: Request for Small Grants Proposals for 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the Fish and Wildlife Service (Service) is currently entertaining proposals that request match funding for wetland conservation projects under the Small Grants program. Projects must meet the purposes of the North American Wetlands Conservation Act of 1989, as

amended. Funding priority will be given to projects from new grant applicants with new partners, where the project ensures long-term conservation benefits.

DATES: Proposals must be postmarked no later than Friday, April 4, 1997.

ADDRESSES: Proposals should be addressed to: North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, Virginia 22203, Attn: Small Grants Coordinator.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Small Grants Coordinator, or Ms. Linda Hutchins, Secretary, North American Waterfowl and Wetlands Office, 703/358–1784; facsimile 703/358–2282.

SUPPLEMENTARY INFORMATION: The purpose of the 1989 North American Wetlands Conservation Act (NAWCA), as amended, is to promote long-term conservation of North American wetland ecosystems, and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitat. Principal conservation actions supported by NAWCA are acquisition, creation, enhancement and restoration of wetlands and wetlands-associated habitat.

In 1996, the North American Wetlands Conservation Council (Council) initiated a pilot Small Grants program with an allocation of $250,000. The objective was to promote long-term wetlands conservation activities through encouraging participation by new grantees and partners who may not otherwise be able to compete in the regular grants program. In the first year, 148 proposals requesting a total of approximately $4.5 million competed for funding. Ultimately, 10 projects were selected to be funded. For 1997, with the approval of the Migratory Bird Conservation Commission, the Council has again allocated $250,000 to continue the Small Grants pilot program.

To be considered for funding in 1997, proposals must have a grant request no greater than $50,000. All wetland conservation proposals will be accepted that meet the requirements of the Act. However, funding priority will be given to projects from new grant applicants (individuals or organizations who have never received a NAWCA grant) with new partners, where the project ensures long-term conservation benefits.

In addition, proposals must represent on-the-ground projects, and any overhead in the project budget may be no greater than 10 percent of the grant amount. The anticipated magnitude of wetlands and wildlife resources benefits that will result from project execution is an important factor to be considered in proposal evaluation, and there should be a reasonable balance between acreages of wetlands and wetland-associated uplands.

Please keep in mind that NAWCA and matching funds may only be used for wetlands acquisition, creation, enhancement, and/or restoration; they may not be used for signage, displays, trails or other educational features, materials and equipment, even though the goal of the project may ultimately be to support wetland conservation education curricula. Projects oriented toward education are not ordinarily eligible for NAWCA funding because education is not a primary purpose of the Act. However, useful project outcomes can include educational benefits resulting from conservation actions. Research is also not a primary purpose of the Act, and research proposals will not be considered for funding.

Even though requiring less total information than those submitted for the regular grants program, Small Grant proposals must still be clearly explained and meet the basic purposes given above and the 1:1 or greater non-Federal matching requirements of the NAWCA. Small Grants projects must also be consistent with Council guidelines, objectives and policies. All non-Federal matching funds and proposed expenditures of grant funds must be consistent with Appendix A of the Small Grants instructions, ''Eligibility Requirements for Match of NAWCA Grant and Non-Federal Funds.''

Small Grants proposals may be submitted at any time but must be postmarked no later than Friday, April 4, 1997. Address submitted proposals as follows: North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, VA 22203, Attn: Small Grants Coordinator.

It is essential that grant request packages be complete when they are received in the North American Waterfowl and Wetlands Office, including all of the documentation of partners (partner letters) with funding pledge amounts. Information on funding in partner letters, i.e., amounts and description regarding use, needs to correspond with budget amounts in the budget table and in any figures provided in the narrative.

The NAWWO will not be able to contact proposal sources to verify and/or request supplemental data and/or materials. Those proposals lacking required information or containing conflicting information will not be considered for funding.

For more information, and to request the Small Grants instructional booklet, call (703)358–1784, facsimile (703)358–2282, or send e-mail to R9ARW__NAWWO@MAIL.FWS.GOV. Contact the Small Grants Coordinator, Dr. Keith A. Morehouse, if you would like to receive the instructions booklet on a computer disk.

In conclusion, the Service requires that upon their arrival in the NAWWO, proposal packages must be: complete with regard to all of the information requested; in the format requested; and on time.

Dated: January 24, 1997.

John G. Rogers,

Director, Fish and Wildlife Service.

[FR Doc. 97–2344 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[UT–912–07–0777–52]

Notice of Meeting of the Utah Resource Advisory Council (RAC)

SUMMARY: Utah's Resource Advisory Council will be conducting a 2-day meeting in Escalante, Utah. A field tour of the Escalante section of the Grand Staircase-Escalante National Monument will be taking place on March 18, 1997. This will be an all-day tour on which we will be discussing issues (i.e. recreation, grazing, archaeology, etc.), pertaining to the Monument. The Council will depart from Escalante for the Monument at 8:00 a.m. RAC meetings are open to the public; however, transportation, meals, and overnight accommodations are the responsibility of the participating public.

Our general meeting of the RAC will take place on March 19, 1997, at the Bureau of Land Management's Escalante Field Office, 755 West Main, Escalante, Utah. At this time, we will be discussing membership and nomination procedures, charter renewal, and an overview of selected issues and opportunities. Opportunities for members of the public to address the Council will take place March 19, 1996, from 8:00 a.m.–8:30 a.m.

FOR FURTHER INFORMATION CONTACT: Any member of the public interested in attending the Monument field tour or desiring an opportunity to address the Council should contact Sherry Foot, Special Programs Coordinator, Bureau of Land Management, 324 South State Street, Salt lake City, Utah, 84111; phone (801) 539–4195, by March 10, 1997.

Dated: January 22, 1997.

G. William Lamb,

Utah BLM State Director.

[FR Doc. 97–2296 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–DQ–M

[CA069–1820–00]

Needles Resource Area, CA; Office Hours

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management located at 101 Spikes Road, Needles, CA 92363, will have a change in office hours. The new hours are: Monday–Friday, 7:30 am to 4:00 pm, PST.

EFFECTIVE DATE: March 1, 1997.

FOR FURTHER INFORMATION CONTACT: Elaine Downing, Bureau of Land Management, 101 Spikes Road, Needles, CA 92363 (619) 326–7000.

George R. Meckfessel,

Acting Area Manager.

[FR Doc. 97–2279 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–10–P

[AZ–040–1430–07–00; AZA 29294]

Notice of Realty Action; Noncompetitive Sale of Public Lands; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following lands in Graham County, Arizona have been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713), at not less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

Gila and Salt River Meridian, Arizona

T. 6 S., R. 27 E.,
Sec. 35, SW¼SE¼NE¼SW¼NE¼NE¼,
S½SW¼NE¼SW¼NE¼NE¼,
SE¼SE¼NW¼SW¼NE¼NE¼,
E½E½SW¼SW¼NE¼NE¼,
W½SE¼SW¼NE¼NE¼,
W½E½SE¼SW¼NE¼NE¼.

The area desicrbed contains 3.125 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

In accordance with Section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910, the land described is hereby classified for disposal by sale.

This land is being offered by direct sale to Manuel Fajardo. If a determination is reached that the subject parcel contains no known mineral values, the mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued, will contain certain reservations to the United States and will be subject to existing easements. Detailed information concerning these reservations as well as specific conditions to the sale are available for review at the Safford Field Office, Bureau of Land Management, 711 14th Avenue, Safford, Arizona 85546.

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 Field Office Manager, Safford Field Office, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: January 27, 1997.

William T. Civish,

Field Office Manager.

[FR Doc. 97–2276 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–32–M

[ID–957–1430–000]

Idaho: Filing of Plats of Survey; Idaho

The supplemental plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. January 21, 1997. The supplemental plat, prepared to show amended lottings in sections 28 and 33, T. 2 N., R. 17 E., Boise Meridian, Idaho, was accepted January 21, 1997.

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, Cadastra Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: January 21, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–2307 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–GG–M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR Section 1501.4 and Section 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Texaco Exploration and Production, Inc., Pipeline Activity, SEA No. G–16093.	Ewing Bank Area; Blocks 873, 829, and 785; South Timbalier Area, South Addition; Blocks 308, 287, 284, 259, 256, 231, and 228; South Timbalier Area; Blocks 209, 184, 181, 156, 153, 133, 130, 124, 87, 62, 59, 44, 41, 26, 23, and 22; Bay Marchand Area; Blocks 4 and 5; Lease G–16093; 4.2–67.1 miles south of the nearest coastline in Louisiana.	1/10/97
W & T Offshore Inc., Structure Removal Operations, SEA Nos. ES/SR 96–138A and 96–139A.	Ship Shoal Area, Block 133, Lease OCS–G 4228, 71.5 miles southwest of Fourchon, Louisiana.	12/23/96

Activity/operator	Location	Date
Coastal Oil & Gas Corporation, Structure Removal Operations, SEA No. ES/SR 97–001.	East Cameron Area, Block 219, Lease OCS–G 7652, 68 miles south of Cameron Parish, Louisiana.	10/24/96
Blue Dolphin Exploration Company, Structure Removal Operations, SEA No. ES/SR 97–002.	Galveston Area, Block 288, Lease OCS 0709, 26 miles southeast of Galveston County, Texas.	10/25/96
Texaco Exploration and Production, Inc., Structure Removal Operations, SEA Nos. ES/SR 97–003, 97–004, and 97–017.	Vermilion Area, Block 31, Lease OCS–G 2868, 7 miles from Vermilion Parish, Louisiana.	11/21/96
Samedan Oil Company, Structure Removal Operations, SEA No. ES/SR 97–006.	South Timbalier Area, Block 147, Lease OCS–G 4885, 32 miles southeast of Terrebonne Parish, Louisiana.	12/02/96
Santa Fe Energy Resources, Structure Removal Operations, SEA Nos. ES/SR 97–009 and 97–010.	Main Pass Area, Blocks 186 and 202, Leases OCS–G 7814 and 5714, 35 miles southeast of St. Bernard Parish, Louisiana.	11/21/96
Hall-Houston Oil Company, Structure Removal Operations, SEA No. ES/SR 97–018.	High Island Area, Block 234, Lease OCS–G 12545, 36 miles south of Chambers County, Texas.	12/13/96
Santa Fe Energy Resources, Inc., Structure Removal Operations, SEA Nos. ES/SR 97–011 through 97–015.	Chandeleur Area, East Addition; Blocks 22, 30, 31 and 34; Leases OCS–G 5739, 7834, 7835, and 5742; 40–43 miles south of Jackson County, Mississippi.	1/7/97
Texaco Exploration and Production, Inc., Structure Removal Operations, SEA No. ES/ER 97–016.	Eugene Island Area, Block 49, Lease OCS–G 13618, 18 miles south of Iberia Parish, Louisiana.	12/2/96

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT:

Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: January 23, 1997.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 97–2310 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed Consent Decree in *United States of America* v. *Braselman Corporation, et al.*, Civil Action No. 96–0872 was lodged on *January 13, 1997* with the United States District Court for the Eastern District of Louisiana.

In its Third Amended Complaint, filed with the United States District Court for the Eastern District of Louisiana, the United States alleges under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. § 9607, that the defendant is liable for reimbursement of response costs incurred and to be incurred by the United States at the Bayou Bonfouca Superfund Site (''Site'') located in the City of Slidell, St. Tammany Parish, Louisiana.

Under the proposed Consent Decree, Fleming American Investment Trust plc (''Fleming American''), one of the eight defendants listed in the Third Amended Complaint, has agreed to pay the EPA Hazardous Substance Superfund (''Superfund'') $3,600,000 in reimbursement of past and future response costs. On December 24, 1996, the United States moved to enter a previous Consent Decree for the Site in which Kerr-McGee Chemical Corporation and Kerr-McGee Corporation have agreed to pay $20,000,000 to the Superfund. The proposed Consent Decree between the United States and Fleming American does not resolve the potential liability of the other five defendants at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Braselman Corporation et al.*, DOJ Ref. No. 90–11–2–803A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Hal Boggs Federal Building, 501 Magazine Street, 2nd Floor, New Orleans, Louisiana 70130; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–2304 Filed 1–29–97; 8:45 am]

BILLING CODE 4410–15–M

Federal Bureau of Investigation

DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on February 20, 1997, from 1:30 pm until 5:00 pm and February 22, 1997, from 8:30 am until 12:00 pm at the Marriott Marquis, 1535 Broadway, New York City, New York 10036. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

The DAB's scope of authority is: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analysis of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by forensic laboratories, including statistical and population genetics issues affecting the evaluation of the frequency of occurrence of DNA profiles calculated from pertinent population database(s); To recommend standards for acceptance of DNA profiles in the FBI's Combined DNA Index System (CODIS) which take account of relevant privacy, law enforcement and technical issues; and, To make recommendations for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The purposes of the meeting on February 20 are to review minutes from the January 1997 meeting and allow for public comment on draft quality assurance standards for forensic DNA analysis. At the February 22 meeting, the Board will consider and vote on any changes to the draft standards, and then vote to recommend DNA analysis standards to the FBI Director.

These meetings are open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meets. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting. Written statements for the record will be furnished to each DAB member for their considerations and will be included in the official minutes of a DAB meeting. Written statements must be type-written on 8½″ × 11″ xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting. Written statements for the record should be submitted to the DFE.

Inquiries may be addressed to the DFE, Dr. Randall S. Murch, Chief, Scientific Analysis Section, Laboratory Division, Federal Bureau of Investigation, J. Edgar Hoover Building, Room 3266, 935 Pennsylvania Avenue, Northwest, Washington, D. C. 20535–0001, (202) 324–4416, FAX (202) 324–1462.

Dated: January 22, 1997.

Randall S. Murch,

Chief, Scientific Analysis Section, Federal Bureau of Investigation.

[FR Doc. 97–2138 Filed 1–29–97; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–009)]

NASA Advisory Council, Advisory Committee on the International Space Station (ACISS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Advisory Committee on the International Space Station.

DATES: Tuesday, February 18, 1997, from 8:30 a.m. until 5:00 p.m. and Wednesday, February 19, 1997, from 12:30 p.m. until 2:00 p.m.

ADDRESSES: NASA Headquarters, MIC 7, 300 E Street, SW, Washington DC, 20546.

FOR FURTHER INFORMATION CONTACT: Mr. W. Michael Hawes, Code M–4, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0242.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room, on Tuesday, February 18, 1997, and from 12:30 p.m. until 2:00 p.m. on Wednesday, February 19, 1997. The agenda for the meeting is as follows:

—Program Status Update
—SPACEHAB Presentation
—Task Group Reports

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 23, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–2253 Filed 1–29–97; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information Pertaining to the Requirement To Be Submitted

1. *The title of the information collection:* Reports Concerning Possible Non-Routine Emergency Generic Problems.
2. *Current OMB approval number:* 3150–0012.
3. *How often the collection is required:* On occasion.
4. *Who is required or asked to report:* Nucler power plant and materials applicants and licensees.
5. *The number of annual respondents:* 210 (110 reactor licensees: 100 materials licensees).

6. *The number of hours needed annually to complete the requirement or request:* 46,200 (420 hours per reactor licensee respondent); 10,000 (100 hours per materials licensee respondent).

7. *Abstract:* NRC is requesting approval authority to collect information concerning non-routine, emergency generic problems which would require prompt action from NRC to preclude potential threats to public health and safety.

Submit, by March 31, 1997 comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC Members of the public who are in the Washington, DC area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC area can dial Fed World, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the Fed World help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, by telephone at (310) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 23rd day of January, 1997.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 97–2328 Filed 1–29–97; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Company; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (ComEd, the licensee) to withdraw its May 19, 1995, application proposing to amend Facility Operating License Nos. NPF–11 and NPF–18 for the LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

The proposed amendment would have revised the technical specifications (TS) by extending the surveillance interval for visual inspection of certain fire protection valves from every 31 days to once per 18 months.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on July 5, 1995 (60 FR 35067). However, by letter dated July 15, 1996, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 19, 1995, and the licensee's letter dated July 15, 1996, which withdrew the application for license amendment. The above 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 local public document room located at the Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 22nd day of January 1997.

For the Nuclear Regulatory Commission.

Donna M. Skay,

Project Manager, Project Directorate—III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–2327 Filed 1–29–97; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: FR Vol. 62, No. 7, Friday, January 10, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., February 3, 1997.

CHANGES IN THE MEETING: Reconsideration of Order No. 1145 in Docket No. C96–1 to be considered also.

CONTACT PERSON FOR MORE INFORMATION: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 97–2367 Filed 1–27–97; 4:38 pm]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38204; File No. SR–OPRA–97–1]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Fee Schedule Revising the Device-Based Information Fees Payable by Professional Subscribers to OPRA's Basic Service and Implementing a New Enterprise Rate Professional Subscriber Fee as an Alternative to the Device-Based Fee

January 24, 1997.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Exchange Act''), notice is hereby given that on January 8, 1997, the Options Price Reporting Authority (''OPRA'') [1] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''Plan''). The amendment revises the device-based information fees payable by professional subscribers to OPRA's basic service. Moreover, OPRA is establishing a new ''enterprise rate'' professional subscriber fee as an alternative to the device-based fee applicable to members of OPRA's

[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the five member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the New York Stock Exchange (''NYSE''); the Pacific Stock Exchange (''PSE''); and the Philadelphia Stock Exchange (''PHLX'').

participant exchanges. OPRA has designated this proposal as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, permitting the proposal to become effective upon filing pursuant to Rule 11Aa3–2(c)(3)(i) under the Exchange Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to revise the fees payable to OPRA by professional subscribers for access to OPRA's basic service, which consists of market data and related information pertaining to equity and index options (''OPRA data'').[2] Professional subscribers are those persons that subscribe to OPRA data and do not qualify for the reduced fees charged to nonprofessional subscribers. OPRA's professional subscriber fees were last revised in January 1996 pursuant to a Plan amendment that initially proposed a program of fee revisions to be implemented in stages over a four-year period.[3] Subsequently, OPRA withdrew that filing and filed instead only the first stage of the fee revision program, with the understanding that the implementation of the remaining stages would be the subject of separate filings.[4]

As was the case with the first stage, this amendment is intended to increase OPRA revenues derived from device-based subscriber fees by less than 5% in order to permit a greater share of the costs of collecting, consolidating, processing and transmitting OPRA data to be covered by these fees, while at the same time continuing the process of simplifying the structure of the professional subscriber fee by reducing the number of pricing tiers for purposes of the volume discount in the per device fee.

The proposed changes in the level of OPRA's device-based professional subscriber fees will reduce the fees paid by smaller subscribers and increase the fees paid by larger subscribers.[5] Subscriber having less than four devices will see their per device fees reduced by $11 per month, while subscribers having from four to nine devices will see no change in their fees. On the other hand, per device fees for larger subscribers that do not elect the alternative enterprise rate described below will increase by amounts ranging from $.35 to $.60 for members of OPRA's participant exchanges, with somewhat higher increases for certain categories of non-members, as a result of the reduction in the number of non-member volume discount tiers from six to three. Moreover, subscriber fees charged to members will be discounted by 2% for members who preauthorize payment by electronic funds transfer through an automated clearinghouse system.

As an alternative to the traditional device-based subscriber fee, this amendment also proposes the adoption of a new ''enterprise rate'' subscriber fee, which will permit members of OPRA's participant exchanges to pay a flat monthly fee and thereby be authorized to access OPRA data on any number of devices at no additional cost. The enterprise rate is based on the number of registered representatives employed by the subscriber, and is $10 per month per registered representative in member firms having up to 20,000 registered representatives, and $7.50 per month per registered representative in member firms having more than 20,000 registered representatives. There is a minimum monthly fee of $2,000 for member firms electing the enterprise rate. OPRA believes the enterprise rate fee will be advantageous to a number of subscribers because it will lower their cost of access to OPRA data and eliminate the burden of keeping track of and reporting to OPRA the number of their devices, and also because it will give firms the flexibility to increase access to OPRA data without additional cost. Because the enterprise rate is based on a member firm's number of representatives registered with the National Association of Securities Dealers, Inc. (''NASD''), the rate is only applicable to member firm locations in the United States. Non-U.S. offices of member firms will continue to pay the device-based fee with respect to those offices, although at a volume discounted rate that takes into account all of their OPRA-enabled devices throughout the world, including those devices in the United States to which the enterprise rate fee may apply.

OPRA is proposing these fee changes because, as a result of the implementation of systems and equipment upgrades and additions in order to increase the capacity and enhance the reliability and security of the OPRA system, the costs of collecting, processing, consolidating and disseminating OPRA data have continued to increase. OPRA anticipates continued escalation of these costs. OPRA states that the device-based fee increases provided for in the proposed amendment are intended to cover these costs. At the same time, by introducing the new enterprise rate subscriber fee, OPRA will be able to lower its costs of administration by eliminating the need to keep track of subscriber device counts, and will pass on a portion of these savings to enterprise rate subscribers in the form of lower overall costs of access. OPRA proposes to implement the new fee structure beginning on March 1, 1997.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3), the amendment is effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Exchange Act.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, and 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 withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All

[2] Information pertaining to foreign currency options (FCOs) is provided through OPRA's FCO Service, which fees are not affected by this filing.

[3] *See* Securities Exchange Act Release No. 36364 (October 12, 1995), 60 FR 54093 (October 19, 1995).

[4] *See* Securities Exchange Act Release No. 36817 (February 7, 1996), 61 FR 5827 (February 14, 1996).

[5] The proposed tiers are as follows: (1) For 1–9 devices, members pay $23.00 per device, and non-members pay $24.00 per device; (2) for 10–29 devices, members pay $14.00 per device, and non-members pay $19.00 per device; (3) for 30–99 devices, members pay $11.00 per device, and non-members pay $19.00 per device; (4) for 100–749 devices; members pay $11.00 per device, and non-members pay $12.75 per device; and (5) for 750+ devices, members pay $9.00 per device, and non-members pay $12.75 per device.

submissions should refer to file number SR–OPRA–97–1 and should be submitted by February 15, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2257 Filed 1–29–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38202; File No. SR–Amex–96–41]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the American Stock Exchange, Inc., Relating to an Increase in Narrow-Based Index Option Position and Exercise Limits

January 23, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Amex subsequently filed Amendment No. 1 to the proposed rule change on November 15, 1996[3] and Amendment No. 2 to the proposed rule change on January 16, 1997.[4] The Exchange has requested accelerated approval for the proposal. This order approves the Amex's proposal, as amended, on an accelerated basis and solicits comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend Exchange Rule 904C to increase position and exercise limits for narrow-based index options from 6,000, 9,000, or 12,000 contracts to 9,000, 12,000, or 15,000 contracts.[5]

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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rules 904C and 905C provide that position and exercise limits for narrow-based index options be set at one of three levels depending upon the weightings of the component securities in such narrow-based index. Currently, a narrow-based index option will have a 6,000 contract limit if a single component security accounts for more than 30% of the index value; a 9,000 contract limit if a single component security accounts for more than 20% (but less than 30%) of the index value or any five component securities together account for more than 50% of the index value; and a 12,000 contract limit for those narrow-based indexes that do not fall within any one of the other categories.

According to the Exchange, stringent position limits create difficulties for investors in narrow-based index options, especially for those institutional investors who own large portfolios of the component securities and who generally use the options markets to hedge those portfolios. Therefore, the Exchange proposes an increase in the position and exercise limits to 9,000 for the lowest level; 12,000 for the middle level; and 15,000 for the highest level.

The Exchange believes that this increase in position and exercise limits is appropriate in that the current limits have been in place since November 30, 1995,[6] and the proposed increases are consistent with the Commission's gradual approach to increase position and exercise limits. According to the Exchange, in the past year, there has been a notable increase in narrow-based index option trading. For example, through September 1996, narrow-based index option volume has increased 42% over all of 1995. As discussed above, the Exchange believes that these increases are needed by investors and will thus increase the depth and liquidity of the market for narrow-based index options without causing any market disruption. In addition, the Exchange will continue to monitor and surveil for manipulation and violations of the position and exercise limits through the use of the monitoring systems currently in place.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule change.

III. 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, N.W.,

---

[6] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to Matthew Morris, Division of Market Regulation (''Division''), Commission, dated November 15, 1996 (''Amendment No. 1''). In Amendment No. 1, the Amex amended its rule filing to restate Item 3(a) in order to correct various errors contained in the original filing and withdrew its request that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

[4] *See* letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to Matthew Morris, Division, Commission, dated January 16, 1997 (''Amendment No. 2''). In Amendment No. 2, the Amex withdrew its request that the Computer Technology Index be given preferential treatment with respect to position and exercise limits and renewed its request that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

[5] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.,* aggregating long calls and short puts or long puts and short calls). Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[6] *See* Securities Exchange Act Release No. 36537 (November 30, 1995), 60 FR 62916 (December 7, 1995) (order establishing position and exercise limits for narrow-based index options at 6,000, 9,000 or 12,000 contracts) (Amex–95–45).

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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, N.W., Washington, D.C. 20549. Copies of such filings also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Ames–96–41 and should be submitted by February 20, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of option contracts that a member or customer can hold or exercise. These rules are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. At the same time, the Commission has recognized that option position and exercise limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.

In this regard, the Amex has stated that the current position limits discourage market participation by certain large investors and the institutions that compete to facilitate their trading. In addition, the Amex notes that index option trading volume has increased significantly since 1995, when the current industry index option position limits were established. In light of the increased volume of narrow-based index option trading and the needs of investors and market makers, the Commission believes that the Amex's proposal is a reasonable effort to accommodate the needs of market participants.

In addition, the Commission notes that the proposal, while increasing the positions limits for narrow-based index options, continues to reflect the unique characteristics of each index option and maintains the structure of the current three-tiered system. Specifically, the lowest proposed limit, 9,000 contracts, will apply to narrow-based index options in which a single underlying stock accounts for 30% or more of the index value during the 30-day period immediately preceding the Exchange's review of industry index option positions limits. A position limit of 12,000 contracts will apply if any single underlying stock accounts, on average, for 20% or more of the index value or any five underlying stocks account, on average for more than 50% of the index value, but no single stock in the group accounts, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's review of industry index option position limits. The 15,000 contract limit will apply only if the Exchange determines that the conditions requiring either the 9,000 contract limit or the 12,000 contract limit have not occurred.

The Commission believes that the proposed increases for the three tiers of 25%, 33%, and 50%, for highest to lowest, respectively, appear to be appropriate and consistent with the Commission's evolutionary approach to position and exercise limits. In this regard, the absence of discernible manipulative problems under the current three-tiered position and exercise limit system for narrow-based index options leads the Commission to conclude that the increases proposed by the Exchange are warranted. The Commission recognizes that there are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concerns. Based upon the absence of discernible manipulation or disruption problems under current limits, however, the Commission believes that the proposed limits can be safely considered. Accordingly, the Commission believes that the Amex's proposed increases of existing position and exercise limits for narrow-based index options is appropriate.[7]

The Commission notes that the Exchange has had considerable experience monitoring the current three-tiered framework in narrow-based index options. The Commission has not found that differing position and exercise limit requirements based on the particular options product to have created programming or monitoring problems for securities firms, or to have led to significant customer confusion. Based on the current experience in handling position and exercise limits, the Commission believes that the proposed increase in position and exercise limits for narrow-based index options will not cause significant problems.

Finally, the Commission believes that the Exchange's surveillance programs are adequate to detect and to deter violations of position and exercise limits as well as to detect and deter attempted manipulative activity and other trading abuses through the use of such illegal positions by market participants.

The Commission finds good cause to approve the proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. On October 24, 1996, the Commission approved an identical proposal for the Philadelphia Stock Exchange, Inc. (''Phlx'').[8] The Phlx's proposal was subject to the full comment period and generated no responses. Amendments Nos. 1 and 2 conformed the Amex's rule filing to the Phlx's proposal. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)[9] of the Act, that the proposed rule change (File No. SR–Amex–96–41), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2260 Filed 1–29–97; 8:45 am]

BILLING CODE 8010–01–M

[7] The Commission continues to believe that proposals to increase position limits and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for each tier, the Commission has concluded that the proposed exercise limit increases for the three-tiered framework do not raise manipulation problems or increase concerns over market disruption in the underlying securities.

[8] *See* Securities Exchange Act Release No. 37863 (October 24, 1996), 61 FR 56599 (November 1, 1996) (order establishing position and exercise limits for narrow-based index options at 9,000, 12,000, or 15,000 contracts) (Phlx–96–33).

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12).

[Release No. 34–38197; File No. SR–DCC–96–13]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing of Proposed Rule Change Amending the Definitions of Trading Limits and Maximum Potential System Exposure

January 23, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 26, 1996, Delta Clearing Corp. (''DCC'') filed with the Securities and Exchange Commission (''Commission'') and on January 10, 1997, filed an amendment to the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. 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

DCC is proposing amendments to its over the counter options trading system procedures and its procedures for repurchase and reverse repurchase agreements (''repo''). In addition, DCC is proposing to issue a new policy statement 96–02.[2] The amendments would provide DCC greater flexibility to address credit or liquidity difficulties with its participants by providing that DCC would not be obligated to reject a transaction which exceeds a participant's ''exposure limits'' if DCC determines that the additional risk of such transaction to the system is *de minimis.* The amendments also clarify and limit the circumstances under which margin funds due and owing from participants may be deducted for purposes of determining the ''maximum potential system exposure'' (''MPSE'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC 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. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends four DCC's procedures and the issuance of Policy Statement 96–02. First, the term ''trading limit'' will be changed to ''exposure limit.'' Second, the consequences of a participant exceeding its exposure limit are clarified so that a participant may continue to effect trades for clearance and settlement in the repo clearing system or the options clearing system if DCC determines that the risk involved is *de minimis (i.e.,* the additional exposure is less than 5%). The processes for rejecting trades, for notification of the affected participants, and for related matters are described in proposed Policy Statement 96–02. In the event that a participant exceeds its exposure limit twice or more in one month, the revised rule would obligate DCC to review with the participant and the insurer, if necessary, whether to change the participant's exposure limit. These changes would clarify the intent that the scope of DCC's procedures is on the regulation of trade clearance and settlement through DCC's facilities and not on the general trading activities of participants. These changes also would provide greater flexibility to DCC to address credit or liquidity difficulties with its participants. Third, Sections 204 and 2204, and the definitions of ''exposure limit'' in Section 101 and 2101, are amended to clarify that each participant has one exposure limit applicable to all transactions in the system. Fourth, the definition of MPSE in the procedures is revised to clarify and limit the circumstances under which margin funds due and owing from participants may be deducted for purposes of determining MPSE. Under the proposed amendment, DCC would continue to include as a credit in calculating MPSE those margin funds due and owing from such participants at or before the immediately succeeding settlement time that were called for by DCC in the ordinary course of entering trades into the options or repo clearing systems, that were reflected in the daily margin report and that were not an additional margin requirement pursuant to Section 603 or 2603 of DCC procedures. This clarification should reduce the possibility that margin calls designed to reduce DCC's credit exposure inadvertently compound that exposure.

DCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder applicable to DCC, and in particular with Section 17A(b)(3)(F) of the Act[4] which requires that a clearing agency be organized and its rules be organized and its rules be designed, among other things, to promote the prompt and accurate clearance and settlement of securities transactions, to safeguard funds and securities in DCC's possession and control, and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. DCC believes the proposed rule change will permit wider utilization of the system by providing greater flexibility to address credit or liquidity difficulties with its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for son 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 N.W.,

[1] 15 U.S.C. 78s(b)(1).

[2] Policy Statement 96–02, which describes the remedial steps DCC will take to correct a participant's violation of its exposure limits is attached as Exhibit A to this notice.

[3] The Commission has modified parts of these statements.

[4] 15 U.S.C. 78q–1(b)(3)(F).

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of DCC. All submissions should refer to the file number SR–DCC–96–13 and should be submitted by February 20, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Policy Statement 96–02

Exposure Limit Violations; Corrective Action Steps

Introduction

The purpose of this Policy Statement is to describe the remedial steps risk management and clearing personnel will take to correct a Participant's violation of such Participant's Exposure Limit. All capitalized terms, unless the context otherwise requires, shall have the meanings set forth in the Procedures for Option Contracts and Procedures for Repurchase and Reverse Repurchase Agreements (''Repos''). The Participant's Exposure Limit is prescribed at the time such Participant's is admitted to the System based on a credit and liquidity analysis of the Participant by Risk Management personnel in consultation with CapMac and may be changed from time to time at the direction of risk management personnel and in consultation with CapMac. An Exposure Limit represents the aggregate incremental margin which may be due from a Participant for a prospective Business Day one Business Day hence as a consequence of such Participant's net Short Positions and Exercised Options with respect to Option Contracts and net Long and/or Short Positions with respect to Repos.

Each day, before accepting trades for submission in the clearing systems, Delta will determine whether a Participant's potential incremental margin due with respect to positions and trades exceeds each Participant's pre-set Exposure Limit.'' Such Exposure Limit is the mathematical net of the exposure derived from Option Contracts and Repos. Risk management shall be delegated with the authority to monitor each Participant's compliance with remaining at or below such Participant's assigned Exposure Limit. In the event a Participant exceeds their assigned Exposure Limit, risk management personnel shall be responsible for taking remedial action to correct such violation.

Remedial Steps

Risk management personnel shall take the following sequential steps to address and/or correct a violation of a prescribed Exposure Limit:

1. Determine that a violation has taken place by first, reviewing the Participant's open positions and second, by comparing the effect any newly executed positions may have on such previously outstanding open positions.

2. Previously open positions may exacerbate the Exposure Limit violation due to market changes in the securities underlying such open positions or, alternatively, market changes with respect to such open positions may have ameliorated the effect of the Exposure Limit violation.

3. After determining the effect of market changes on open positions, risk management personnel shall determine the residual magnitude of the remaining excess, if any, over the Participant's Exposure Limit.

4. Risk management personnel shall determine if the Participant has maintained any excess margin in such Participant's Account. Such excess margin may take the form of collateral held and not yet returned to such Participant at the request of such Participant. In the event such Participant has maintained such excess margin, risk management shall determine whether such excess margin is sufficient to cover the Exposure Limit violation.

5. In the event there is no excess margin, risk management personnel shall determine whether the magnitude of the violation is material or *de minimus.* As a general matter, a *de minimus* violation shall be construed to be 5% or less of such Participant's Exposure Limit.

6. If the violation is determined to be *de minimus*, no further remedial action is required. If the violation is determined to be material (i.e. in excess of 5% of such Participant's Exposure Limit), then further remedial action is required. If a *de minimus* exposure limit occurs more than twice within thirty days, Risk Management Personnel will consider whether to change the Exposure Limit.

7. Risk management personnel are authorized to inform the Participant that such Participant may not submit any additional transactions unless such transactions have the effect of reducing such Participant's Exposure Limit. In addition, risk management personnel are authorized and shall request intra-day margin from the Participant. In the event intra-day margin is not forthcoming, risk management personnel are authorized to reject transactions which resulted in the Participant exceeding their Exposure Limit which are otherwise not liquidating transactions. Risk management personnel shall inform the Participant subject to the Exposure Limit violation that no additional transactions may be submitted by such Participant, unless such transactions have the effect of reducing or eliminating the violation. Risk management personnel shall also inform Authorized Brokers that all transaction effected by the violation Participant shall be rejected unless such transactions have the effect of reducing or eliminating the violation until further notice. Accordingly, each such transaction effected by an Authorized Broker shall be reviewed on a trade by trade basis.

8. In the interests of minimizing the financial impact on Participants, including those Participants in good standing who have executed transactions opposite a Participant subject to an Exposure Limit Violation, risk management personnel shall first reject the most recently executed but not yet settled forward start Repo trades. In the event the Participant has not effected any unsettled forward start Repro trades or the rejection of such trades does not result in the elimination of the Exposure Limit violation, risk management shall then reject all Option Contract transactions executed during the current business Day. Risk management personnel shall promptly contact other Participant, including Authorized Brokers, in order to identify a replacement party for the Participant subject to the Exposure Limit violation. Such replacement Participant assume the rejected transactions on the terms under which the trade was originally executed. In the event a replacement Participant cannot be identified, risk management personnel shall be authorized to contact the executing counterparty opposite the Participant subject to an Exposure Limit violation and inform such executing counterparty that the subject transaction has been rejected for clearance.

9. In the event the rejection of forward start Repo trades and current Business Day Option Contact trades are insufficient to eliminate the Exposure Limit violation, risk management personnel shall be authorized to create a Liquidating Settlement Account for such Participant. Upon the creation of such an account, risk management personnel shall begin the process of closing such Participant's outstanding positions. Such authority to initiate the liquidation process is predicated on the Participant's inability or unwillingness to affirmatively respond to a previously executed intra-day margin call pursuant to the Procedures.

[FR Doc. 97–2259 Filed 1–29–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38198; File No. SR–DCC–96–12]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing of a Proposed Rule Change to Amend Procedures Relating to Monitoring and Limiting Exposure From Repurchase Agreements

January 23, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 26, 1996, the Delta Clearing Corp. (''DCC'') filed with the Securities and Exchange Commission (''Commission'') and on January 10, 1997, amended the proposed rule change (File No. SR–DCC–96–12) as described in Items I, II, and III below, which items have been prepared primarily by DCC. 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

DCC is proposing to amend the margining of overnight repurchase agreements (''repos''). DCC's policy statement 96–01, attached as Exhibit 1 to this notice, describes the proposed amendments in greater detail.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC 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. DCC 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 purpose of the proposed rule change is to amend DCC's procedures for monitoring and limiting its exposure from the clearance and settlement of its participants' overnight repos. First, the proposed rule change will establish DCC's participants' core margin requirement as either $1 million dollars par amount of U.S. Treasury securities or a greater amount as determined by DCC based upon exposures arising out of overnight repo agreements effected by the participant.[2] DCC will calculate weekly the core margin requirement for each participant by using the most recent eight weeks (if available) of overnight repo transactions and will notify each participant of its core margin requirement. If DCC notifies a participant that the participant is required to deposit additional core margin, the participant by 11 a.m. on the business day following the notice must deposit with DCC's clearing bank U.S. Treasury securities whose market value equals or exceeds the participant's additional margin requirement.

Second, the proposed rule change will amend Section 2602 of DCC's rules to require DCC to provide each participant with a supplemental daily margin report by 3 p.m. of each business day. The supplemental daily margin report will indicate (i) the participant's overnight repo positions established during that business day, (ii) the net mark-to-market valuations for the participant's overnight repo positions,[3] (iii) the core margin and excess unreturned margin on deposit, and (iv) the amount of additional margin that the participant must deposit with DCC's clearing bank. In the event that the net mark-to-market valuation exceeds 65% of the sum of the participant's core requirement and unreturned margin on deposit, DCC will require the participant to deposit additional margin in the amount of such excess. The additional margin must be deposited with DCC no later than 5 p.m. of that business day. Failure to deposit the amount of any margin deficit shown on the supplemental daily margin report will be grounds for suspension and sanctions pursuant to Section 2608 of DCC's rules.

Third, the proposed rule change will amend DCC's rules to eliminate the collection of performance margin for overnight repos. The daily margin report will reflect only the margin required on the participant's term repo positions.

DCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because the proposed rule change will better enable DCC to safeguard the funds and securities under its possession and control by amending DCC's procedures to assure that it has adequate collateral to address a participant's default of insolvency.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which DCC 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

---

[1] 15 U.S.C. 78s(b)(1).

[2] Overnight repos will be defined as repo agreements whose off-date is the immediately succeeding business day following the on-date for such transactions. Term repos will be defined as repos agreements whose off-date is two or more business days following the on-date for such transactions.

[3] Net mark-to-market means the arithmetic sum resulting from the estimated cost to liquidate a participant's under margined positions in overnight repos offset by the estimated proceeds from liquidating a participant's over margined positions in overnight repos.

[4] 15 U.S.C. 78q–1.

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DCC. All submissions should refer to the file number SR–DCC–96–12 and should be submitted by February 20, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,
Deputy Secretary.

Exhibit 1

Risk Basked Core Margin Analysis

Introduction

Delta Clearing Corp. (''Delta'') collects a fixed core margin. The purpose for collecting core margin is to ensure that Delta has sufficient funds so as to minimize the risk of exposure to Participants engaging in Overnight Repo or Reverse Repo (collectively ''Overnight Repo'') transactions. Because Delta does not currently collect margin on overnight trades until 11:00 a.m. the following day, there is a potential exposure for up to 27 hours (assuming market opening at 8:00 a.m.) Although the vast majority of trades unwind on a next day basis before the 11:00 a.m. deadline, there is nevertheless a need to collect margin funds in a more timely manner in order to reduce the level of the exposure Delta assumes opposite each Participant. The methodology that Delta will employ to address potential exposures for Overnight Repo trades will be a two-step process. The first step is to establish core margin requirements based on an evaluation of each Participant's Overnight Repo trading activity. The goal is to set core margin requirements at a level sufficiently high enough to cover the majority of potential mark-to-market exposures Delta assumes opposite each Participant. The second step is to employ intra-day margin calls in the event market exposure exceeds the core margin. The amounts of total margin collected should be sufficient to cover the intra-day exposure and any additional exposure which could arise the following day.

Core Margin Methodology

Using a statistically based methodology, core margin levels will be established by Delta that are sufficient to cover 97.5% of Participant's statistically predicted potential Overnight Repo mark-to-market exposure to Delta. The adequacy of core margin will be evaluated weekly.

Average Overnight Exposure

Each week, Delta will review the Overnight Repo trading activity for each Participant to determine the Overnight Repo mark-to-market exposure that Participant posed to Delta. Mark-to-market exposure is the total net sum of the differences between the contract value of an Overnight Repo when such Overnight Repo was effected and the mark-to-market value of such Overnight Repo reflective of the end-of-day pricing for the collateral underlying such Overnight Repos. A negative number represents an exposure for Delta, while a positive number represents overcollateralization. An exposure can result from either a Long Repo or Short Repo Position. The following example shows how mark-to-market exposure is calculated.

Participant	Position	Contract value	Mark-to-market	Delta's (exposure) or over collateralization	Delta's net (exposure) or over collateralization
A	Repo	100	101	1	
	Reverse	102	104	(2)	
	Repo	100	97	(3)	
	Reverse	101	100	1	(3)
B	Reverse	104	102	(2)	
	Repo	99	103	4	
	Repo	98	92	(6)	(4)

Delta would have a net mark-to-market exposure to Participants A and B of 3 and 4, respectively. Such daily mark-to-market exposures would be calculated for each Participant on each Business Day during the prior eight calendar weeks. Such daily mark-to-market exposures will then be averaged to derive an average daily mark-to-market exposure for each Participant. It should be noted that Business Days on which a net overcollateralization is derived will be eliminated from the survey for the purposes of deriving an average daily mark-to-market exposure.

Statistical Analysis

The average Overnight Repo mark-to-market exposure is a starting point but may not be a sufficient determinant of market risk exposure. The core margin level will be set at an amount in excess of the average net negative mark-to-market in order to ameliorate exposures that vary from the mean. To determine an adequate level of core margin Delta performed the following analysis:

• Delta reviewed the trading activity of all Participants dating back so that 8

[5] 17 CFR 200.30–3(a)(12).

weeks (40 observations) could be studied.

• The core margin for each Participant will be adjusted to reflect a two (2) standard deviation test of the net negative mark-to-market over the course of the observation period. By statistical inference, such a level of core margin should be sufficient to cover 95% of all mark-to-market exposures. The left tail of the distribution curve represents those market movement occurrences when the Overnight Exposure will be 2 standard deviations (''sigma'') less than the average. The resulting exposure will be covered by the core amount. Therefore, Delta is only potentially exposed on the right tail and the core statistically predicted to cover 97.5% of the occurrences of exposure. The remaining 2.5% will be covered by intra-day margin calls.

• In the event there are an insufficient number of actual observations (i.e., less than 40), Delta will calculate an average based upon the number of actual observations. Delta will apply the calculated average to the number of observations derived by subtracting the number of known observations from 40. This shall be the population of observations used to calculate the average negative net mark-to-market.

For example, a Participant with an average overnight exposure for the prior eight weeks of $1MM whose standard deviation is calculated to be $250M would be required to post core margin of $1.5MM.

Intraday Margin Calls

In the event that the intra-day mark-to-market valuation with respect to Overnight Repos exceeds the Participant's core requirement and any additional margin, Delta would require the Participant to deposit supplemental margin in the amount of such excess already on deposit by 5 p.m. of such Business Day.

Operational Procedures

On each Business Day, prior to 3:00 p.m., Delta's margining system will produce a Supplemental Daily Margin Report which will list the following:

1. All Overnight Repos in which the On-date is the current Business Day and the Off-date is the subsequent Business Day;
2. Cash prices used to value underlying collateral;
3. The Overnight Repo mark-to-market values utilizing current prices for the collateral underlying such Overnight Repos; and
4. The net exposure.

In the event the net exposure is in excess of 65% of the core margin and any additional margin, supplemental margin will be called for by Delta. Such supplemental margin must be deposited by 5:00 p.m.

Every Monday, Delta's credit department will produce a spreadsheet which will calculate the week's core margin requirement. The spreadsheet will contain the following headings:

1. Participant;
2. 8 Week Average Exposure;
3. Standard deviation of the 8 week average mark-to-market exposure; and
4. Core Margin Requirement.

A database of the daily market-to-market exposures will be created and maintained for each Participant in a spreadsheet. The database will contain the latest 40 daily mark-to-market exposures for each Participant (over-collateralized values will be excluded). Each Participant's 8 week average and the applicable standard deviation will be calculated as described above. The average net mark-to-market will be adjusted to reflect the two standard deviation test. The resulting product becomes the new core margin requirement for each Participant. These new core margin requirements will then be forwarded to Delta's Risk Manager for input into the margining system.

By 3:00 p.m. on Each Business Day on which such core margin requirement has been calculated, each Participant will be notified of its new core margin requirement. If the requirement is greater than the then prevailing core requirement, the Participant must post the difference the following Business Day. If the new core requirement is below the then prevailing core requirement, the deposited excess will be returned to the Participant by 11:00 a.m. the following Business Day.

[FR Doc. 97–2320 Filed 1–29–97; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–38201; File No. SR–DTC–96–17]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Movement of Securities Positions Within a Collateral Group

January 23, 1997.

On October 4, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–96–17) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') to permit the movement of securities positions within a collateral group.[1] Notice of the proposal was published in the Federal Register on November 8, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The rule change offers a new service to DTC participants that permits the movement of securities positions within a collateral group.[3] The fee for this new service is $.43 per transaction. Under the rule change, DTC will eliminate certain processing steps associated with other kinds of book-entry deliveries for transactions within a collateral group and thereby will lower the cost of such transactions. DTC has determined that the credit and financial controls employed for regular book-entry deliveries are not necessary for transfers that occur within the same collateral group because a participant's collateral monitor and net debit position are not affected by such transfers.

DTC anticipates that the new service will be used in connection with participant compliance with Rule 15c3–3 under the Act.[4] Presently, a broker-dealer can use DTC's Memo Segregation Service (''memo seg'') to help them comply with Rule 15c3–3. The memo seg service allows a participant to create a ''memo'' position within its free account to enable the participant to avoid making an unintended delivery of a designated quantity of customer fully-paid securities that either are in the participant's free account or are expected to be received into that account. Other participants prefer to comply with Rule 15c3–3 by moving customer fully-paid securities from a free account to an additional DTC account established by the participant. Under DTC's previous procedures, any book-entry movement required DTC to perform its regular risk management procedures for book-entry deliveries (*e.g.*, review of the participant's collateral monitor and net debit position). Accordingly, the application of these procedures to book-entry

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 37916 (November 1, 1996), 61 FR 57933.

[3] A participant with multiple accounts may group its accounts into ''families'' (*i.e.*, ''collateral groups'') and instruct DTC to allocate a specified portion of its overall collateral and net debit cap to each family. All accounts that a participant designates as belonging to a common collateral group share a single collateral monitor and single net debit cap.

[4] 17 CFR 240.15c3–3. Rule 15c3–3 under the Act requires, among other things, that broker-dealers maintain possession or control of fully-paid or excess margin securities they hold for the accounts of customers (''customer fully-paid securities'').

deliveries between the participant's free account and the additional account made this approach more expensive than the memo seg approach as a means of complying with Rule 15c3–3. The rule change will accommodate transfers of securities, including customer fully-paid securities, from a participant's free account to an additional account within the same collateral group and will do so using procedures that are less expensive than a regular book-entry delivery.

II. Discussion

Section 17A(b)(3)(F) requires the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with DTC's obligations under the Act. The new service will permit participants to move securities positions from a participant's free account to an additional DTC account within the same collateral group without undergoing DTC's usual risk monitoring controls and therefore at a lower cost. Because such transfers do not affect the overall level of a participant's collateral monitor or its net debit position, the Commission believes that DTC can implement the new procedure while still assuring the safeguarding of securities and funds in its custody or for which it is responsible. Furthermore, because the fees associated with the transfer of securities within a collateral group will now be comparable to the costs of memo seg, participants will be afforded the flexibility to choose which method to protect customer fully-paid securities that best suits their needs without cost differences being a significant factor.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–96–17) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2258 Filed 1–29–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–38191; File No. SR–NASD–97–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Access to Nasdaq's SelectNet Service by National Securities Exchanges Trading Nasdaq Securities on an Unlisted Trading Privilege Basis

January 22, 1997.

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 January 17, 1997, the National Association of Securities Dealers, Inc. (''NASD'') or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to grant national securities exchanges trading securities listed on The Nasdaq Stock Market (''Nasdaq'') on an unlisted trading privilege (''UTP'') basis access to Nasdaq's SelectNet Service for those securities in which the exchange disseminates quotations through the Nasdaq system.

II. Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis of the Proposed Rule Change

On January 10, 1997, the SEC approve several NASD rule changes and a variety of modifications to Nasdaq's Small Order Execution System (''SOES'') and SelectNet Service [1] that are designed to integrate the Commission's new order handling and execution rules.[2] In particular, among other things, the SEC approved an amendment to SOES that provides that orders entered into SOES will be rejected when a UTP exchange is alone at the best bid or offer displayed on Nasdaq. Because SOES will not execute orders when a UTP exchange is alone at the inside market, the NASD and Nasdaq believe it is absolutely critical that NASD members have the ability to readily access such superior priced orders displayed by the UTP exchange. Accordingly, in order to ensure that the NASD members can efficiently access UTP exchanges and that SOES will not reject order for more than very brief periods of time when a UTP exchange is alone at the inside, Nasdaq proposes to modify SelectNet to provide UTP exchanges with the ability to send and receive preferenced and broadcast SelectNet orders.[3] For example, if the inside market in stock ABCD is 10 – 10⅛, 10×10, and the Chicago Stock Exchange (''CHX'') represents the only offer at 10⅛ SOES will reject all incoming market orders to buy for as long as the CHX is alone at the best offer and NASD members will have the ability to send a preferenced SelectNet order to the CHX specialist.[4]

In addition to minimizing the time that SOES will reject orders when a UTP exchange is alone at the inside, giving the UTP exchanges access to SelectNet will provide Nasdaq market makers and UTP specialists with a more efficient means to access each others quotes. In this connection, Nasdaq market makers have expressed their desire to have a

[1] *See* Securities Exchange At Release No. 38156 (January 10, 1997) (order partially approving file SR–NASD–96–43).

[2] Among others, the new SEC rules include a new rule, SEC Rule 11Ac1–4 (''Display Rule''), governing the display of customer limit orders, and amendments to the SEC's firm quote rule, Rule 11Ac1–1, requiring market makers to reflect in their quotes any better priced orders that they place into an ECN (''ECN Rule''). The SEC also adopted an ''ECN Display Alternative'' that permits market makers to comply with the ECN Rule by having an ECN display their orders to the marketplace. *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

[3] SelectNet permits NASD members to direct buy or sell orders in Nasdaq securities to a single market maker (preferenced orders) or broadcast the order to all market makers in the security. Nasdaq operates SelectNet to provide investors and members with an automated means to facilitate the communication of trading interest between members, the negotiation of orders with the possibility of price improvement, and the dissemination of last sale reports to the tape. SelectNet also serves as an effective auxiliary mechanism to one-on-one telephone communication between members, especially in times of market stress. The service is available for members to negotiate and execute orders form 9:00 a.m. until 5:15 p.m., Eastern Standard Time.

[4] Each exchange currently is permitted to trade up to 500 Nasdaq National Market securities on a UTP basis. At the present time, however, the CHX is the only exchange that trades Nasdaq stocks pursuant to UTP. Accordingly, the CHX would be the only exchange that would be granted access to SelectNet at this time.

more efficient linkage with the CHX because of the impact CHX quotes have on their proprietary execution systems. In particular, because many firms operate systems that guarantee executions based on the best bid or offer on Nasdaq, which includes CHX quotes, these firms want to be able to readily access CHX quotes when the CHX is alone at the inside price. In addition, among other things, more efficient access to CHX quotes will serve to avoid locked and crossed markets. In sum, the NASD believes its proposal will serve to promote intermarket competition, enhance the price discovery process for Nasdaq securities, and dramatically improve the access of Nasdaq market makers to the CHX floor and vice versa.

Accordingly, Nasdaq and the NASD believe that the proposed rule change is consistent with Sections 15A(b)(6) and 11A(a)(1)(C) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 11A(a)(1)(C) provides that it is in the public interest to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Specifically, by improving the access of Nasdaq market makers and UTP specialists to each others' quotes, the proposed rule change will serve to enhance intermarket competition, the best execution of investors' orders, and the price discovery process for Nasdaq securities. Moreover, Nasdaq and the NASD believe the proposed rule change will serve to benefit small investors because it will help to minimize the length of time that SOES will reject orders when a UTP exchange is alone at the best bid or offer on Nasdaq. Finally, Nasdaq and the NASD believe that providing UTP exchanges access to SelectNet is responsive to the Commission's request that Nasdaq and the exchanges create an electronic linkage between Nasdaq market makers and exchange specialists.[5]

[5] *See* Securities Exchange Act Release No. 37772 (October 1, 1996).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective immediately pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4 because, consistent with the standards set forth in Rule 19b–4(e)(5), the proposal does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; or (3) have the effect of limiting the access to or availability of SelectNet. In particular, because no operational aspect to SelectNet is being modified by this proposal in any way other than an expansion of the scope of market participants that will have access to the SelectNet, Nasdaq and the NASD believe it is appropriate that the proposal has become effective upon filing pursuant to Rule 19b–4(e)(5). In fact, because of the intermarket access that will be fostered by the proposal, Nasdaq and the NASD believe the proposal will promote the protection of investors and enhance competition.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 20, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2255 Filed 1–29–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12) (1989).

[Release No. 34–38205; File No. SR–NASD–96–42]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Transfer of Limited Partnership Interests

January 24, 1997.

On November 15, 1996, NASD Regulation, Inc., (''NASD Regulation'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow members under certain circumstances to petition the staff of NASD Regulation for permission to modify the standardized limited partnership transfer forms.

The proposed rule change was published for comment in the Federal Register on December 17, 1996.[3] No comments were received on the proposal. This order approves the proposal.

Currently, all members of the National Association of Securities Dealers, Inc. (''NASD'') are required to use standardized transfer, registration confirmation, and distribution allocation forms (''Forms'') when transferring any limited partnership security.[4] After use of the Forms became mandatory, transfer agents, member firms, and securities attorneys raised a number of questions concerning the applicability of the Forms to certain types of transfers. For example, it was suggested that the distribution

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38042 (Dec. 11, 1996), 61 FR 6633 (Dec. 17, 1996). Subsequently, NASD Regulation extended the time period for Commission action until January 31, 1997. Letter from John Ramsay, Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated January 21, 1997.

[4] *See* Securities Exchange Act Release No. 36783 (Jan. 29, 1996), 61 FR 3955 (Feb. 2, 1996).

allocation form be modified to provide additional options for specific treatment of capital transactions, capital distributions, sale or refinancing proceeds, special distributions, liquidating distributions, and distributions with respect to terminating transactions. In another case, an NASD member stated that modifications to both the transfer and distribution allocation forms were necessary to satisfy certain conditions of purchase imposed by its limited partnership secondary transaction department. In addition, although the Forms were intended to be used for all purchases, sales, exchanges, and transfers of limited partnership interests, many member firms have developed standard one page documents for transfers that are ''not for consideration,'' such as transfers related to a change of trustee or custodian or transfers resulting from death, divorce, or gift. These previously developed documents fulfill the same purpose as the new Standardized Transfer Forms, *i.e.*, permitting a fast and efficient transfer of the security.

Finally, other miscellaneous issues have been raised in connection with the use of the Forms, including a request to meet a requirement that each investor demonstrate U.S. citizenship.

To address this recurring situation, NASD Regulation has proposed a rule change that would add a new paragraph to NASD Rule 11580 that authorizes NASD Regulation's Corporate Financing Department, in response to a member's written request, to issue a waiver from the requirement to use the Forms for good cause shown. This waiver would allow the requesting member to modify the Forms as requested to meet legal or regulatory requirements or to otherwise facilitate the transfer of the limited partnership interests.

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 association, and, in particular, with the requirements of Section 15A.[5] Specifically, the Commission believes the proposal is consistent with the Section 15A(b)(6) requirements that the rules of an association be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.[6]

The Commission recognizes that there may be instances where the current standardized forms may need to be modified to expedite the transfer of limited partnership interests due to the variety of partnership products available. Therefore, the Commission believes the proposed rule change will allow NASD Regulation staff to provide the flexibility sometimes necessary to facilitate a more efficient transfer of limited partnership interests in particular cases where a rigid ''form over substance'' requirement might hinder the transfer process.

Nevertheless, to ensure the proposed rule change will not unnecessarily reduce or eliminate the benefits of utilizing standardized forms, the Commission emphasizes that waivers allowing members to modify the Forms should be issued only under limited circumstances. They will be issued when needed to allow members to meet legal or regulatory requirements not sufficiently addressed in the Forms or to otherwise facilitate the transfer of limited partnership interests. In applying this standard, it is important that waivers not be issued to allow members to substitute their own forms or to make wholesale changes to the Forms, unless otherwise noted.[7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–96–42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2256 Filed 1–29–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*(b)(6). In finding that the proposed rule change is in the public interest, the Commission, consistent with Section 3(f) of the Act, has taken into consideration the extent to which the proposal promotes efficiency. 15 U.S.C. 78c(f).

[7] An overly liberal application of this exemptive authority by NASD Regulation staff would eliminate the benefits sought by the NASD when it proposed the use of standardized forms.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[Release No. 34–38203; File No. SR–PSE–96–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Foreign Broker-Dealers

January 24, 1997.

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 December 16, 1996, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to specify that the term ''broker/dealer,'' as used in PSE Rules 6.52(a), 6.86 and 6.87, includes foreign broker/dealers. The Exchange is also proposing to adopt a definition of the term ''foreign broker/dealer.''

The text of the proposed rule change is available at the Office of the Secretary, the PSE, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PSE 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

Purpose

PSE Rules 6.52(a), 6.86 and 6.87, relating to option transactions, currently distinguish between orders for broker/dealers and orders for non-broker/dealers. Under these rules, only non-broker/dealer customer orders are eligible to be placed on the public limit order book,[1] to be entered for automatic execution,[2] or to be eligible for a

[1] Rule 6.52(a) provides in part that ''[o]nly non-broker/dealer customer orders may be placed with an Order Book Official pursuant to this Rule.'' *Cf.* SEC Rule 11Ac1–4(a)(6) (equity ''customer limit orders'' that must be displayed pursuant to Rule 11Ac–1–4 include those that are ''not for the account of either a broker or dealer'') (effective January 20, 1997).

[2] Rule 6.87(a) provides: ''Only non-broker/dealer customer orders are eligible for execution on the

guaranteed minimum execution of twenty contracts on the floor of the Exchange.[3]

The purpose of the proposed rule change is to clarify the meaning of the term ''broker/dealer,'' as used in Rules 6.52(a), 6.86 and 6.87, by specifying that it includes foreign broker/dealers. The Exchange is also proposing to adopt the following definition of ''foreign broker/dealers,'' to be applicable to PSE Rules 6.52(a), 6.86 and 6.87:

''*Foreign Broker/Dealer.* The term 'foreign broker/dealer' means any person or entity that is registered, authorized or licensed by a foreign governmental agency or foreign regulatory organization to perform the function of a broker or dealer in securities, or both. The terms 'broker' and 'dealer' mean the same as set out in Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, provided that a 'broker' or 'dealer' may be a bank.''[4]

In light of the current globalization of the securities markets, the Exchange believes that the subject rules should be applied consistently. In this regard, an exchange specialist in Canada or Mexico, for example, should be subject to the same rules applicable to trading on the PSE as an exchange specialist in the United States, and should not have a competitive advantage over United States broker/dealers.

The Exchange believes that the proposed definition is sufficiently specific to ensure fair enforcement of the affected rules.[5] The question of whether a person or entity is registered, authorized or licensed by a foreign governmental agency or a foreign regulatory organization to perform the specified functions, is objective in nature and easily verifiable—as is currently the case with determinations of whether U.S. brokers or dealers are registered as such with the Commission. The PSE notes that, as a member of the Intermarket Surveillance Group (''ISG''),[6] the Exchange may promptly obtain from ISG members and affiliates information on the accounts of persons or entities entering orders for execution on the PSE, including whether such orders have been entered for the account of a broker or dealer. The Exchange may also obtain such information from foreign exchanges or foreign regulatory authorities with whom the Exchange has an effective surveillance sharing agreement or from a foreign exchange or regulatory authority that is subject to a memorandum of understanding with the Commission that would require those entities to provide such information to the Exchange upon request.

Based upon its review of the applicable regulatory structures of various foreign jurisdictions, the Exchange believes that the proposed definition is sufficiently specific to cover the foreign equivalents of U.S. brokers and dealers. These foreign jurisdictions include: Australia, Canada, the Czech Republic, France, Germany, Hong Kong, Hungary, Japan, Luxembourg, Mexico, the Netherlands, Poland, South Africa, South Korea, the Slovak Republic, Switzerland, and the United Kingdom.[7]

The Exchange also notes that the proposed definition of ''foreign broker/dealer'' contains objective criteria for its application and is narrower in scope than the definition of ''foreign broker or dealer'' specified in SEC Rule 15a–6(b)(3).[8] In addition, the Exchange believes the proposed definition is substantially similar in form and substance to SEC Rule 17a–7(c) (definition of nonresident brokers and dealers) and Exchange Act Sections 3(a)(50) (definition of foreign securities authority) and 3(a)(52) (definition of foreign financial regulatory authority).

Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and to prevent unfair discrimination between customers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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 reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 25049. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

---

Exchange's Automatic Execution System (''Auto-Ex'').''

[3] Rule 6.86(a) provides: ''Each trading crowd is required to provide a depth of twenty (20) option contracts for all non-broker/dealer customer orders, at the bid/offer that is displayed as the disseminated market quote at the time such orders are announced or displayed at the trading post designated for trading the subject option class.''

[4] Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 provide:

''(4) The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.

''(5) The term 'dealer' means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or is some fiduciary capacity, but not as a part of a regular business.''

[5] *See* Securities Exchange Act Release No. 37695 (September 17, 1996), 61 FR 50366 (September 25, 1996) (order approving SR–PSE–96–19).

[6] ISG was created in February 1981 to design, develop and implement a coordinated intermarket surveillance system among securities markets in the United States. On July 14, 1983, the exchanges participating in the ISG entered into an agreement to coordinate more effectively surveillance and investigative information sharing agreements in stock and options markets. In 1989, with the active participation of the SEC and Commodity Futures Trading Commission, the ISG created an ''affiliate'' category for futures exchanges and non-U.S. SROs. Currently, the ISG is comprised of nine members and 13 affiliates.

[7] *See generally* H. Bloomenthal & S. Wolff, *International Capital Markets and Securities Regulation* (1996).

[8] SEC Rule 15a–6(b)(3) provides:

''The term 'foreign broker or dealer' shall mean any non-U.S. resident person (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by this rule) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of 'broker' or 'dealer' in sections 3(a)(4) or 3(a)(5) of the Act.''

the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–46 and should be submitted by February 20, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2319 Filed 1–29–97; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

White House Commission on Aviation Safety and Security; Open Meeting

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of meeting.

SUMMARY: The White House Commission on Aviation Safety and Security will hold its final meeting to discuss aviation safety and security issues. Part of the meeting is open to the public and part is not. The meeting was originally scheduled for January 28, 1997, but a new date has been set.

DATES: The meeting will be held on Tuesday, January 28, 1997, from 9:00 am–12:00 noon and 2:00 pm to 5:00 pm.

ADDRESSES: The meeting will take place in the Commerce Department Auditorium, 14th Street, between Constitution and Pennsylvania Avenues, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard K. Pemberton, Administrative Officer, Room 6210, GSA Headquarters, 18th & F Streets, NW, Washington, DC 20405; telephone 202.501.3863; telecopier 202.501.6160.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 USC Appendix), DOT gives notice of a meeting of the White House Commission on Aviation Safety and Security (''Commission''). The Commission was established by the President to develop advice and recommendations on ways to improve the level of civil aviation safety and security, both domestically and internationally. The principal purpose of the meeting on February 11, which was postponed from its original date of January 28, is to formulate the Commission's final recommendations to the President.

The portion of the meeting from 9:00 am–12:00 noon, during which the Commissioners will formulate their recommendations on measures to improve aviation security, will be closed to the public pursuant to the following exemptions in the Government in the Sunshine Act, which apply to public meetings under the Federal Advisory Committee Act:

Exemption 1: Classified information. In order properly to formulate their recommendations, the Commissioners may need to discuss or refer to information properly classified in the interest of national security, which may not be done in public.

Exemption 3: Information exempted from public disclosure by some other statute. Under 49 USC 40119(b), the Administrator of the Federal Aviation Administration (FAA) may prohibit public disclosure of certain categories of information relating to aviation security, if disclosure would constitute an unwarranted invasion of personal privacy, reveal company confidential information, or create a risk to the safety of individuals traveling in inter-or intra-state air transportation. These categories are described at 14 CFR Part 191. Such information will be discussed or referred to at the meeting.

Exemption 4: Company confidential information. There is competition in the aviation industry in many forms: among carriers, among equipment manufacturers, and among software manufacturers, among others. Public discussion of some of these matters could violate 18 USC 1905, which makes it a crime to reveal improperly company confidential information that has come into the possession of the Government.

Exemption 9: Premature disclosure would lead to frustration of proposed agency action. The final recommendations of the Commission have not been formulated; it is possible, however, that public knowledge of some of the security recommendations may frustrate their acceptance and implementation by the FAA and other agencies. The Commission is authorized to protect against this possibility.

Limited seating for the public portion of the meeting is available on a first-come, first-served basis. The public may submit written comments to the Commission at any time; comments should be sent to Mr. Pemberton at the address and telecopier number shown above.

Issued in Washington, DC, on January 24, 1997.

Nancy E. McFadden,

General Counsel, Department of Transportation.

[FR Doc. 97–2336 Filed 1–29–97; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD08–96–063]

Lower Mississippi River Waterway Safety Advisory Committee Gaming Vessel Subcommittee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee's Gaming Vessel Subcommittee will meet to discuss navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

DATES: The meeting will be held from 10 a.m. to approximately 12 noon on Tuesday, February 18, 1997.

ADDRESSES: The meeting will be held in room 1830 of the World Trade Center, 2 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Administrator, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 1 *et seq.* The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting consists of the following items:

(1) Introduction of members.

(2) Discussion of emergency evacuation of gaming vessels.

(3) Presentation of any additional new items for consideration of the Committee.

INFORMATION ON SERVICES FOR INDIVIDUALS WITH DISABILITIES: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Administrator where listed under ''For Further Information Contract'' as soon as possible.

Dated: January 10, 1997.

T. W. Josiah,

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

[FR Doc. 97–2341 Filed 1–29–97; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–003]

Prevention Through People

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings with request for comments.

SUMMARY: On January 13, 1995, the Coast Guard published a notice (60 FR 3288) concerning the formation of a Quality Action Team (QAT) to address the human element in marine accidents. From the report issued by this QAT, the docket, [additional comments through public contacts], workshops, and the Coast Guard advisory committees, a strategic plan for Prevention Through People (PTP) has been developed. The Coast Guard will hold four public meetings to discuss the PTP Strategic Plan. The Coast Guard would also like to solicit comments on specific topics as listed below. The meetings will be held on the dates and at the locations listed below.

DATES: See **SUPPLEMENTARY INFORMATION** section for details on the meeting dates and comment deadlines.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting addresses and the address for mailing public comments.

FOR FURTHER INFORMATION CONTACT: CDR Mark G. VanHaverbeke, Human Element and Ship Design Division (G–MSE–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone 202–267–2997, fax 202–267–4816, email fldr-he@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION:

Background Information

Over the years several studies have determined that the human element contributes to between 60 and 95 percent of marine casualties. The QAT issued its report in July 1995. They recommended the Coast Guard develop a long-term strategy to refocus accident prevention efforts from technical measures to the human element. PTP recognizes the critical role the human element plays in maritime safety. The PTP concept asserts that safe and profitable operations require a systematic approach toward the constant and balanced interaction between the elements of management, the work environment, individual behavior, and appropriate technology. A systematic approach compels us to consider the interaction between these elements based on a solid foundation of rules, regulations, and standards. PTP strives to bring together government and industry in making this cultural change. It relies upon cooperation, innovation, and most importantly—people.

The Coast Guard developed the PTP Strategic Plan based on input from the marine industry and the findings of the PTP QAT. Supporting the PTP Strategic Plan is a Coast Guard focused implementing plan. Both plans are available by contracting the person listed above under **FOR FURTHER INFORMATION CONTACT.** The PTP Strategic Plan outlines the framework that an organization can use to build its own PTP program and develop its own implementation plan. The three major elements of the PTP Strategic Plan are the PTP vision, principles, and goals.

First, the vision is an idealized view of the future state of where the entire maritime industry would like to be in the future. It reads, ''We will achieve the world's safest, most environmentally sound and cost-effective marine operations by emphasizing the role of people in preventing casualties and pollution.'' The vision is ambitious, yet achievable if we work together. It also inspires action by the Coast Guard, other government agencies, maritime unions, and industry.

Second, the principles establish the values and philosophy that will guide the actions of us all as we each implement PTP. The principles are:

1. Honor the Mariner—Seek and respect the opinion of those who ''do the work,'' afloat and ashore.
2. Take a Quality Approach—Engage all elements of the marine transportation system to drive continuous improvements.
3. Seek Non-Regulatory Solutions—Emphasize incentives and innovation.
4. Share Commitment—Recognize and act upon the responsibility of government, management and workers to foster a safe and environmentally sound marine transportation system.
5. Manage Risk—Apply cost-effective solutions to marine safety and environmental issues, consistent with our shared public stewardship responsibilities.

Third, the goals describe the changes required to achieve the PTP vision. The goals are to:

1. Know More—Significantly expand our knowledge and understanding of the human element and its role in maritime operations and accidents.
2. Train More—Give members of the marine community the necessary skills and knowledge to improve safety and prevent pollution.
3. Do More—Improve professional performance through a practical application and open communication of human element knowledge within the marine community including Coast Guard and maritime personnel.
4. Offer More—Provide incentives for improvement in safety management systems.
5. Cooperate More—Work together to address the human element in transportation safety and pollution prevention.

Our PTP Implementation Plan is an internal, working document that contains the objectives and activities required to meet the PTP goals. Other organizations, such as marine companies and maritime unions, can use the Coast Guard's Implementation Plan as a guide to create their own.

A synopsis of the ongoing projects include:

1. Demonstrating the financial benefits of implementing PTP.
2. Redirecting Coast Guard education, training, and job recruitment to focus on understanding human error.
3. Creating avenues to share analyses, best practices, and lessons-learned.
4. Establishing a Streamlined Inspection Program.
5. Executing partnerships with maritime organizations including the American Waterways Operators (AWO), the Passenger Vessel Association (PVA), the United States Chamber of Shipping (USCS), and the American Petroleum Institute (API).
6. Developing ways to identify and test practical solutions to fatigue related issues.
7. Implementing the International Safety Management (ISM) Code and changes to the Standards for Training, Certification, and Watchkeeping Convention (STCW).
8. Providing guidance on the use of risk assessment and risk reduction procedures.

These and other projects will bring us closer to the vision of PTP.

Comments

The Coast Guard is soliciting feedback on the following areas. Please provide specific examples whenever possible. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ × 11 inches, suitable for copying and electronic filing. Please identify the docket by the docket number at the top of this notice. Comments should be sent to Public Docket, Room 3406, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. The deadline for comments is May 30, 1997. Comments will not be taken over the phone.

1. Lessons Learned and Near-Accidents. How do companies and mariners gather information on near-

accidents and the resulting lessons learned? What methods have proven successful? What methods have failed? Why? How is this information disseminated either aboard ship or throughout the company? How have the issues of liability and fear of retribution been addressed?

2. Partnerships. Please share company experiences with intra-industry, inter-industry, and industry/government partnerships. What has been your company's experience working with a shared VTS system and/or a port safety committee?

3. Management. Recognizing that the International Safety Management Code is voluntary for the domestic fleet, are you aware of any specific management-driven initiatives designed to foster focus on human element issues? What have been the results of these initiatives?

4. Cost of Safety. How is safety cost-effective in your company? What is the value of safety? What factors were used to measure the value of safety? How do these costs compare with the benefits you are realizing?

5. Fatigue. Please share company experience with fatigue. What countermeasures have proven successful against fatigue?

6. Information sharing. How is information shared between industries (i.e. between tankers and cargo ships)? How is it shared between companies within an industry?

7. Waterway Management. Please identify low cost/no cost safety solutions that can be applied to increase overall confidence in America's ports and waterways.

Public Meeting

Attendance is open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meetings. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meetings. Written material may be submitted prior to, during, or after the meetings. The Coast Guard is not required to address the comments at the public meetings.

The meetings will be held:

1. New Orleans—February 25, 1997, 3:00 p.m. to 6:00 p.m., at the Hyatt Regency Hotel, Loyola Ave. & Poydras Plaza, New Orleans, LA 70140–1012.

2. Oakland—February 28, 1997, 9:00 a.m. to 1:00 p.m., at the Oakland Federal Building, Third Floor Conference Center, 1301 Clay Street, Oakland, CA 94612.

3. St. Louis—March 26, 1997, 1:00 p.m. to 5:00 p.m., at the Robert A. Young Federal Building, Second Floor Auditorium, 1222 Spruce St., St. Louis, MO 63103.

4. Providence, RI—April 18, 1997, 12:30 p.m. to 4:30 p.m. Because the meeting site is not yet determined, persons wishing to attend this meeting should contact the person listed above under **FOR FURTHER INFORMATION CONTACT** for information about the meeting location.

Information on Services for the Handicapped

Contact CDR VanHaverbeke for information on facilities or services for the handicapped or to request special assistance at the meetings as soon as possible.

Dated: January 24, 1997.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–2342 Filed 1–29–97; 8:45 am]

BILLING CODE 4910–14–M

Federal Railroad Administration

[FRA Emergency Order No. 14, Notice No. 4]

Eureka Southern Railroad Company (a.k.a. Northwestern Pacific Railroad); Notice of Limited Relief From Emergency Order No. 14

AGENCY: Federal Railroad Administration, Department of Transportation.

ACTION: Notice of partial relief.

SUMMARY: This notice provides partial relief for the Northwestern Pacific Railroad (formerly the Eureka Southern Railroad) from the limitations of Federal Railroad Administration Emergency Order No. 14. The relief allows the railroad, using specified procedures, to transport hazardous materials when the transportation is necessary for the railroad to effect repairs on the railroad. Transportation of hazardous materials for other purposes, as well as passenger transportation, remain prohibited.

FOR FURTHER INFORMATION CONTACT: James T. Schultz, Regional Administrator, Region 7, Federal Railroad Administration, 801 I Street, Suite 466, Sacramento, California 95814, (916) 498–6540; or Nancy Lummen Lewis, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C., (202) 632–3162.

SUPPLEMENTARY INFORMATION: The Federal Railroad Administration (FRA) gives notice of limited relief granted to the Eureka Southern Railroad Company, now known as the Northwestern Pacific Railroad (NWP), from certain conditions of this emergency order. This relief will permit the NWP to transport hazardous materials, under circumstances specified in this notice, over its line of track between Willits and Fort Seward, California (milepost 145.5 to milepost 216.6).

Background

As issued June 7, 1990, this emergency order prohibited Eureka Southern Railroad Company from operating passenger service and from transporting hazardous materials on its line between Willits and Eureka, California (milepost 142.5 to milepost 284.1). On October 1, 1990, FRA published notice that the emergency conditions no longer existed between mileposts 142.5 and 145.5, and between mileposts 216.6 and 284.1. The restrictions of the emergency order were lifted on those areas of track. In a third notice, published November 27, 1992, FRA stated that the prohibitions of the emergency order for the remaining track continued in effect for the new owner of the Eureka Southern Railroad, the North Coast Railroad Authority. The North Coast Railroad Authority operates the NWP.

In July, 1996, the NWP requested that FRA allow the railroad to transport fuel oil to contractors performing work on the NWP right-of-way within the restricted area. The fuel oil is needed for railroad internal use to service heavy earth moving equipment. There exists no other means of access to these work areas.

Following investigations conducted by FRA, I conclude that the relief requested by NWP is necessary to facilitate the railroad's efforts to maintain and improve its trackage. The relief requested is in the interest of railroad safety.

Relief

NWP may transport over its rail line between Willits and Fort Seward, California materials required by 49 CFR parts 171–179 to be placarded as hazardous under the following terms and conditions:

(1) The material(s) must be for the internal use only by NWP for construction, maintenance and operation of the railroad.

(2) Any movement of the material(s) shall be transported by special train, operated solely for that purpose.

(3) Maximum speed of train movements of the material(s) shall be 10

miles per hour, regardless of any higher track speed specified by the railroad.

(4) NWP shall provide written notice of intended movements of the material(s) to the county or counties in which the movements shall take place, as well as to the California Public Utilities Commission and to FRA's Regional Office in Sacramento, California. Each notice shall state the material(s) to be moved and the point of origination and point of destination. The notice shall be provided no less than five days prior to the movement.

(5) Prior to any movement, the NWP chief mechanical officer shall inspect and certify in writing that any car carrying the material(s) is safe and in compliance with applicable Federal regulations. An inspection and certification will not be necessary for any movement for the purposes of repositioning the car for loading or unloading when such a movement starts and ends on the same track and that track is other than main track.

(6) Any car carrying the material(s) shall be placed so that inadvertent movement, inclement weather, or other occurrence will not cause the car or its contents to fall in any river, stream or other body of water.

This limited lifting of Emergency Order No. 14 is contingent upon NWP's compliance with the terms of the relief. The issuance of this Notice does not preclude imposition of another emergency order should NWP violate those terms.

The restrictions set forth in Emergency Order No. 14 continue to apply to all rail transportation of passengers and of hazardous materials not for internal use by NWP on that portion of track between Willits and Fort Seward, California. Although Eureka Southern was named as the respondent in the Order, its terms and conditions were intended to apply to any successors. Therefore, the terms and conditions apply to Northwestern Pacific Railroad, as the railroad is now known.

This Order remains in effect on this track until the NWP, or any successor thereto, makes sufficient repairs to receive relief under the provisions of the Order. Each train movement in violation of this Order shall subject NWP or any subsequent owner or operator committing the violation to a civil penalty of up to $20,000. 49 U.S.C. 20104, 20111.

Issued in Washington, D.C. on January 23, 1997.

Jolene M. Molitoris,

Administrator.

[FR Doc. 97–2298 Filed 1–29–97; 8:45 am]

BILLING CODE 4910–06–P

Notice of Safety Bulletin

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Bulletin.

SUMMARY: The FRA is issuing Safety Bulletin 97–1 addressing recommended safety practices for certain locomotives equipped with emergency MU fuel line cut-off devices located inside the locomotive control compartment at a location which enables the cut-off device to be activated unintentionally.

FOR FURTHER INFORMATION CONTACT: Doug Taylor, Staff Director, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3346).

SUPPLEMENTARY INFORMATION:

Background

Preliminary investigatory findings following the derailment of a run-away Union Pacific Railroad (UP) freight train on January 12, 1997, at Hayden, California, indicate that the emergency multiple-unit (MU) fuel line cut-off device (cut-off device) located inside the locomotive control compartment was unintentionally activated by the locomotive engineer. The engineer was apparently unaware of the activation. Activation of the cut-off device shuts down all MU'ed locomotives within a number of seconds. In this case, all three locomotives in the train were shut down. As a result, the engineer lost all of the dynamic brake retarding effect being used to control the speed of the train down a 2.2 percent grade. The engineer initiated an emergency application of the train's air brakes, but the train continued out of control and derailed at a siding turnout.

The cut-off device on this locomotive is located below waist level on the face of the control stand superstructure on the engineer's left side. Although the plastic guard surrounding the cut-off device was found broken, a test conducted on a similar locomotive indicated that even with the guard in place it was possible to operate the cut-off device simply by brushing it with a person's knee. The locomotive's manufacturer, General Motor's Corporation, Electro-Motive Division, (EMD), indicates that at least 365 SD–60M series locomotives manufactured for UP are equipped with cut-off devices similarly located. Information available to FRA indicates that these locomotives are identified as UP6000 thru UP6365. There may be other locomotives with similar designs on other railroads.

Recommendation

In light of the potential dangers involved in loss of dynamic braking due to inadvertent activation of the emergency MU fuel-line cut-off device on some locomotives, FRA strongly recommends that the following safety precautions be taken:

1. All railroads must inspect all locomotives to determine if the emergency MU fuel line cut-off device is located in such a position in the locomotive cab that it can be inadvertently activated by the engineer. If the device is located in such a position, the corrective action in accordance with paragraphs 2 and 3 must be initiated.

2. Relocate the cut-off device to a location where the device can not be unintentionally activated, or

Protect the cut-off device in a housing that prevents unintentional activation.

3. Until the improvements listed above are made, these locomotives must not be operated in the controlling or lead position.

FRA recognizes that there may be operational conditions under which these locomotives, while in the trailing position, must be occupied by employees. Under these circumstances, the engineer's seat must remain unoccupied to the greatest extent possible. If such trailing locomotive is to be occupied, the conductor must brief all occupants as to the location of the cut-off device and the need to avoid all contact with it.

Issued in Washington, D.C. on January 17, 1997.

Bruce Fine,

Associate Administrator for Safety.

[FR Doc. 97–2300 Filed 1–29–97; 8:45 am]

BILLING CODE 4910–06–P

Saint Lawrence Seaway Development Corporation Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2:00 p.m., February 19, 1997, at The Breakers Restaurant, 1 South County Road, Palm Beach, Florida 33480. The agenda for this meeting will

be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than February 17, 1997, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, D.C. on January 24, 1997.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 97–2301 Filed 1–29–97; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 877(a)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 877(a), as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of 877(a)) with respect to whom the Secretary received information during the quarter ending December 31, 1996.

The following individuals have lost their U.S. citizenship during the quarter ending December 31, 1996.

Last Name, First Name, Middle Name

Alger, Frederick Moulton
Anthony, Susan
Binder, Heide Marie
Brilioth, Margaret Joan French
Brown, Dolores Celia
Buck, Helen Smith
Carter, Wesley Anthony
Cattier, Mathieu Francois Felicien
Cha, Stephen Sungdeok
Chae, Soo Jung
Chastain, Heidi Keim
Choi, Jong Suk
Choi, Jeong Hyoun
Cheng, Wen Hon
Chu, Samuel Wai Tak
Churchill, Owen Paul
Clyde, Kyung Ja
Creeth, Patricia Marilyn
Davis, Sonja Elisa
Diamond, Monica Clara
Dimma, Katharine Louise
Dobmeier, Brigitte
Dworschak, Elisabeth
Eggers, Carsten Rolf
El Ouassil, Victoria Johanna
Exelby Nee Bergdahl, Shirley Yvonne
Feiner, Gideon
Fergusson, Barbara
Gaffney, Michael Terry
Garza, Caroline Ellen
Gerstner, Sylvia Grace
Getty, Mark Harris
Grlica, George
Guillon-Teruel, Francoise Laure
Gulya, Gabor Laszlo
Haas, Eric Michael
Hively, Ronald Andre
Hwang, Paul Philip
Johnson, Chris Norman
Keel, Yolinda
Kiang, David Tien Sik
Kim, Soo Hong
Kim, Jong Hwan
Knight, Louis Helmer
Kosta, Robert Stanley
Kraus, Ruth
Krimholtz, Michael John
Krupiak, Katharine Elfriede
Leathers, Christina Helene
Lee, Sung Soo
Lee, Jennie Mi
Lee, Hae Ree
Lee, Tse-Tah
Lim, Byung Ok
Manquen, Timothy Duane
Marti, Ruth Daniela
Martinez, Roland Joe
McMillan, Norman
Minz Geneen, Florence Rose
Moon, Steve Young Chang
Morris, Joan Marie
Mussells, Emily Layman
Olaussen, Tom Kaare
Parsons, Graham Turner
Patterson, Yong Tok
Phillip, Thomas William
Posey, Franklin Melvin
Priest, Francesca Louise
Pujals, Eduardo Fernandez
Roh, Young Jeung Woo
Rossing, Dennis Siegbert
Segewitz, Elise
Seto, John Gin Chung
Simonsen, Thomas Keith
Smith, Beverly Anne
Sofronas, Angelos
Sommerlad, Elizabeth Hale Winkler
Storjohann, Carol Ann
Su, Beyue Chen
Tanenbaum, Julie Lynn
Tanenbaum, Kenneth Michael
Tanenbaum, Lisa Ellen
Trihey, Timothy Patrick
Trotta, Robert Thomas
Tze, Lou Man Ping
Vourecas-Petalas, Tatiana
Wong, Michelle Nancy
Wong, Denise Angela
Wurtz, Patrick George
Yarnall, Alexander Coxe

Approved: January 22, 1997.

Doug Rogers,

Project Manager, International District Operations.

[FR Doc. 97–2283 Filed 1–29–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Foreign Language and Area Studies—U.S. Students and Scholars; Request for Proposals

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop and administer programs in cooperation with USIA that will assist U.S. citizens who are graduate students and postdoctoral scholars in North African, Middle Eastern and South Asian studies. Activities permitted under this program include foreign language training, foreign area studies and foreign area research for periods ranging from two to twenty-four months abroad.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

The funding authority for the program cited above is provided through the Near and Middle East Research and Training Act (Public Law 102–138, Section 228 as amended by Public Law 103–236, Section 233).

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

For the purpose of this program, the geographic area refers to the region

consisting of countries and peoples covered by the Bureau of Near Eastern and South Asian Affairs of the U.S. Department of State as of October, 1991, and Turkey.

Current eligible locales for overseas research are: Mauritania, Morocco, Tunisia, Egypt, Israel, the West Bank and Gaza, Jordan, Syria, Turkey, Saudi Arabia, Kuwait, United Arab Emirates, Bahrain, Oman, Qatar, Yemen, Pakistan, Indian, Sri Lanka, Bangladesh and Nepal.

Individual NMERTA grantees are required to provide proof of insurance to the grant-making organizations before fellowshipo funds can be released. Health and accident, MEDEVAC and repatriation insurance is strongly recommended.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/AEN–97–01.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, March 28, 1997. Faxed documents will not be accepted, nor will documents postmarked March 28, 1997 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Grants should begin no earlier than September 1, 1997 and no later than September 31, 1997 and end no later than 24 months thereafter.

FOR FURTHER INFORMATION, CONTACT: Patricia Spann or John Sedlins in the Academic Exchange Program Division, North Africa, Middle East and South Asia branch, E/AEN, Room 212, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone number (202) 619–5368, fax number (202) 205–2466, Internet address PSPANN@USIA.GOV or JSEDLINS@USIA.GOV to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov./ or from the Internet Gopher at gopher://gopher.usia.gov. Under the heading ''International Exchanges/Training,'' select ''Request for Proposals (RFPs).'' Please read ''About the Following RFPs'' before downloading.

TO RECEIVE A SOLICITATION PACKAGE VIA FAX ON DEMAND: The entire Solicitation Package may be received via the Bureau's Grants Information Fax on Demand System,'' which is accessed by calling 202/401–7616. Please reuqest a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Assistant Patricia Spann on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 7 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AEN–97–01, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the Support for Diversity section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview:

Pursuant to the Agency's authorizing legislation, (the Fulbright-Hays Act, Public Law 87–256), programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Support is offered in two categories. Organizations may address one or both categories, but must submit a separate proposal for each category. Special emphasis will be given to the social sciences and humanities.

Category A—Pre-doctoral students. Organizations that are awarded funding shall solicit and receive applications from U.S.-citizen, graduate students nationwide who seek to conduct overseas study and research in the eligible locales listed above. Eligible fields of study and research shall be open to students of all disciplines with a new or established interest in topics requiring study or research in the geographic area(s). Eligibility shall be restricted to applicants who have a baccalaureate degree and who are already enrolled in graduate-level academic programs.

Category B—Postdoctoral scholars. Organizations that are awarded funding shall solicit and receive applications from U.S.-citizen, postdoctoral scholars nationwide who seek to conduct overseas study and research in the eligible locales listed above. Eligible fields of study and research shall be open to scholars of all disciplines with a new or established interest in topics requiring study or research in the geographic area(s). Eligibility shall be restricted to applicants who have a Ph.D. and who have college or university teaching experience.

In preparing a proposal, organizations should address the subjects of program design and scheduling, as well as program administration. At a minimum, a successful proposal should clearly cover publicity, selection process, orientation for participants, and logistical and scheduling measures. A basic plan for post-program follow-up and evaluation should also be included. In keeping with the Government Performance and Results Act of 1993, proposals should emphasize how grantee organizations will measure the effectiveness, economy and efficiency of their program responsibilities. Cost-sharing will be used in the review process as one such measure. The proposal must be typewritten, double-spaced and may not exceed twenty (20) pages including budget attachments.

Proposed budget: Awards will not exceed $200,000. Awards to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive, line-item budget based on the specific guidance in the

Solicitation Package for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants must provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Budget guidelines apply to proposals submitted in both Category A and B described above.

Allowable costs for the program include the following:

(1) round-trip international travel via an American flag carrier;
(2) domestic travel;
(3) maintenance and per diem;
(4) academic program costs (e.g. book allowance);
(5) orientation costs;
(6) cultural enrichment costs (e.g. admissions, tickets, etc.);
(7) U.S.-based administration costs (e.g. advertisement, recruitment and selection costs).

Please refer to the Solicitation Package (the Proposal Submission Instructions or PSI) for complete budget guidelines for formatting instructions.

Administrative costs are not to exceed 20 percent of the requested budget. Cost-sharing is strongly encouraged.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the USIA Office of Academic Programs, as well as by the USIA Office of North African, Near Eastern, and South Asian Affairs and the USIA post(s) overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen mutual understandings, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-on activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: January 24, 1997.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–2302 Filed 1–29–97; 8:45 am]

BILLING CODE 8230–01–M

Telecommunications Training Program for Slovenia

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop training programs in telecommunications for Slovenia.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding

between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

The funding authority for the program cited above is provided through the Support for Eastern European Democracies Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this announcement should refer to the above title and reference number *E/P–97–23*.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, March 14, 1997. Faxed documents will not be accepted, nor will documents postmarked March 14, 1997 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

Program activities should begin after June 1, 1997.

For Further Information, Contact: The Office of Citizen Exchanges, E/PE, Room 216, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: 202–619–5319, fax: 202–619–4350, e-mail address: (cminer@usia.gov} to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/ or from the Internet Gopher at gopher//gopher.usia.gov. Under the heading ''International Exchanges/Training,'' select ''Request for Proposals (RFPs).'' Please read ''About the Following RFPs'' before downloading.

Please specify USIA Program Officer Christina Miner on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Information Agency, Ref.: E/P–97–23, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

Supplementary Information: Overview: Slovenia is beginning the process of restructuring its telecommunications sector. Restructuring involves liberalizing the provision of voice and data telephony services and providing opportunities for alternative telecom operators and networks to offer more advanced products and services to a nation than had been previously available. The first step is the adoption of legislation authorizing new entrants into the nation's telecom arena. USIA is interested in proposals that will provide an overview of the U.S. telecommunications sector with special attention focussing on the regulatory structure as provided by an independent regulatory authority such as the U.S. Federal Communications Commission; the effects of liberalization and privatization on the telecom sector and how this restructuring can be accomplished; and the introduction of new telecommunications products and services to consumers and how this can be accomplished in other markets. Participants should include officials from the incumbent telecommunications service provider; government officials from the ministry and parliamentary body that will oversee the restructuring of the telecom sector; and other participants who may represent vendors or potential new networks. The primary component of this project will be a U.S. study tour to give participants an idea of how the telecommunications sector functions in the U.S. Exchange and training programs supported by institutional grants should operate at two levels: they should enhance institutional relationships; and they should offer practical and comparative information to individuals to assist them with their professional responsibilities. Strong proposals usually have the following characteristics: an existing partner relationship between an American organization and a host-country institution; a proven track record of conducting program activity; cost sharing from American or in-country sources, including donations of air fares, hotel and housing costs; experienced staff with language facility; and a clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant. USIA wants to see tangible forms of time and money contributed to the project by the prospective grantee institution, as well as funding from third party sources.

Note: Research projects or projects limited to technical issues are not eligible for support nor are film festivals or exhibits. Exchange programs for students or faculty or proposals that request support for the development of university curricula or for degree-based programs are also ineligible under this RFP. Proposals to link university departments or to exchange faculty and/or students are funded by USIA's Office of Academic Programs (E/A) under the University Affiliation Program and should not be submitted in response to this RFP.

Guidelines

1. All grant proposals must clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. Note that participants should be professionals working in the field of telecommunications and not members of university faculties. In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to approve or reject participants recommended by the

program institution. Programs must also comply with J–1 visa regulations.

2. Programs that include internships in the U.S. should provide letters tentatively committing host institutions to support the internships. Letters of commitment from the hosts of study tour site visits should also be included, if applicable.

3. Applicants are encouraged to consult with USIS offices regarding program content and partner institutions before submitting proposals. Award-receiving applicants will be expected to maintain contact with the USIS post throughout the grant period.

Proposal Budget

Please refer to the Solicitation Package for complete budget guidelines instructions.

Applicants must submit a detailed line item budget based on specific instructions in the Program and Budget Submission Instructions. Proposals for less than $60,000 will receive preference.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not flat rate.

3. Interpreters. If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should respond to the program requirements of the RFP.

2. *Program planning and ability to achieve objectives:* Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Goals should be reasonable and attainable. A detailed agenda and relevant work plan should demonstrate how objectives will be achieved. A timetable indicating when major program tasks will be undertaken should be provided. The substance of seminars, presentations, consulting, internships, and itineraries should be spelled out in detail. Responsibilities of incountry partners should be clearly described.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The narrative should demonstrate proven ability to handle logistics. Proposals should reflect the institution's expertise in the subject area and knowledge of Slovenia.

6. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

7. *Project Evaluation:* Proposals should include a plan and methodology to evaluate the project's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire and/or plan for use of another measurement technique (such as a focus group) to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

8. *Cost-effectiveness/cost sharing:* The overhead and administrative components of the proposal, including salaries, honoraria, and subcontracts for services, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as

institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: January 24, 1997.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–2303 Filed 1–29–97; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 62, No. 20
Thursday, January 30, 1997

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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 951227306-5306-01; I.D. 092596B]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Nontrawl Sablefish Mop-Up Fishery

Correction

Document 96-25369, beginning on page 51670 in the issue of October 3, 1996, was inadvertently published in the Proposed Rules section. It should have appeared in the Rules and Regulations section.

BILLING CODE 1505-01-D

federal register

Thursday
January 30, 1997

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Parts 922, 929 and 937

Florida Keys National Marine Sanctuary; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 922, 929 and 937

[Docket No. 960712192–6192–01]

RIN 0648–AD85

Florida Keys National Marine Sanctuary Final Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule; removal and revision of regulations; summary of Final Management Plan.

SUMMARY: Pursuant to the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act, NOAA has developed the comprehensive final management plan for the Florida Keys National Marine Sanctuary (FKNMS or the Sanctuary). NOAA hereby issues final regulations to implement that plan and govern the conduct of activities within the Sanctuary. This document also summarizes the Final Management Plan—Environmental Impact Statement (FMP/EIS) for the Sanctuary. The FMP/EIS details the goals and objectives, management responsibilities, research activities, educational and outreach programs, and interpretive enforcement activities for the Sanctuary. The intended effect of the final regulations, and FMP/EIS is to protect and manage the conservation, recreational, ecological, historical, research, educational, and aesthetic qualities of the Sanctuary consistent with the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act.

EFFECTIVE DATES: Congress and the Governor of the State of Florida have forty-five days of continuous session of Congress beginning on the day on which this document is published to review the regulations before they take effect. After forty-five days, the regulations automatically become final and take effect, unless the Governor of the State of Florida certifies within the forty-five-day period to the Secretary of Commerce that a regulation or regulations is unacceptable. In such case, the regulation (or regulations) cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State of Florida. In no event will § 922.164(d) become effective in State waters before July 1, 1997. A document announcing the effective dates will be published in the Federal Register.

ADDRESSES: Requests for a copy of the FMP/EIS, the Final Regulatory Flexibility Analysis, or the Federalism Assessment should be submitted to the Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, Florida 33050.

FOR FURTHER INFORMATION CONTACT: Billy Causey, Sanctuary Superintendent, 305/743–2437 or Edward Lindelof, East Coast Branch Chief, 301/713–3137 Extension 131.

SUPPLEMENTARY INFORMATION:

I. Introduction

The FKNMS was designated by an act of Congress entitled the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA, Pub. L. 101–605) which was signed into law on November 16, 1990. The FKNMSPA directed the Secretary of Commerce to develop a comprehensive management plan and regulations for the Sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (NMSA) (also known as Title III of the Marine Protection, Research, and Sanctuaries Act of 1972), as amended, 16 U.S.C. 1431 et seq. The NMSA authorizes the development of management plans and regulations for national marine sanctuaries to protect their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

The authority of the Secretary to designate national marine sanctuaries and implement designated sanctuaries was delegated to the Under Secretary of Commerce for Oceans and Atmosphere by the Department of Commerce, Organization Order 10–15, § 3.01(z) (Jan. 11, 1988). The authority to administer the other provisions of the NMSA was delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83–38, Directive 05–50 (Sept. 21, 1983, as amended).

II. Summary of Final Management Plan/Environmental Impact Statement

The FMP/EIS sets forth the affected environment of the Sanctuary including the boundary and details its resources and human uses of the Sanctuary. The FMP/EIS also describes the resource protection, research, education and interpretive enforcement programs, and details the specific activities to be conducted in each management program area. The FMP/EIS includes a discussion, by program area, of agency roles and responsibilities.

The goals and objectives for the Sanctuary are to: (1) Enhance resource protection through comprehensive and coordinated conservation and ecosystem management that complements existing regulatory authorities; (2) support, promote, and coordinate scientific research on, and monitoring of, the site-specific marine resources to improve management decision-making in national marine sanctuaries; (3) enhance public awareness, understanding, and the wise use of the marine environment through public education, and interpretive enforcement; and (4) facilitate, to the extent compatible with the primary objective of resource protection, multiple uses of the Sanctuary.

A. Resource Protection

The highest priority management goal is to protect the marine environment, resources, and qualities of the Sanctuary. The specific objectives of protection efforts are to: (1) Reduce threats to Sanctuary resources; (2) encourage participation by interested agencies and organizations in addressing specific management concerns (e.g., monitoring and emergency-response programs); (3) develop an effective and coordinated program for the interpretive enforcement of Sanctuary regulations in addition to other regulations already in place; (4) promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives through an educational/interpretive program stressing resource sensitivity and wise use; (5) ensure that the water quality of the Florida Keys is maintained at a level consistent with the purposes of Sanctuary designation; (6) establish cooperative agreements and other mechanisms for coordination among all the agencies participating in Sanctuary management; (7) ensure that the appropriate management agencies incorporate research results and scientific data into effective resource protection strategies; and (8) coordinate policies and procedures among the agencies sharing responsibility for protection and management of Sanctuary resources.

B. Research Program

Effective management of the Sanctuary requires the conduct of a Sanctuary research program. The purpose of Sanctuary research is to improve understanding of the Florida Keys' coastal and offshore environment, resources, and qualities, and to resolve specific management problems. Some of

these management problems involve resources common to coastal and offshore waters, and nearby Federal, State, and local refuges and reserves. Research results will both support management efforts to protect Sanctuary resources and qualities, and be incorporated into interpretative programs for visitors and others interested in the Sanctuary.

Specific objectives for the research program are to: (1) Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improved management of the Sanctuary; (2) focus and coordinate data collection efforts on the physical, chemical, geological, and biological oceanography of the Sanctuary; (3) encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes; (4) initiate a monitoring program to assess environmental changes as they occur due to natural and human processes; (5) identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; (6) encourage information exchange and cooperation among all the organizations and agencies undertaking management-related research in the Sanctuary to promote more informed management; and (7) incorporate research results into the interpretive/education program in a format useful for the general public.

C. Education and Outreach

The goal for the Sanctuary education and outreach program is to improve public awareness and understanding of the significance of the Sanctuary and the need to protect its resources and qualities.

The management objectives designed to meet this goal are to: (1) Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability; (2) broaden support for Sanctuary management by offering programs suited to visitors with a diverse range of interests; (3) provide for public involvement by encouraging feedback on the effectiveness of education programs, collaboration with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and (4) collaborate with other organizations to provide educational services complementary to the Sanctuary program.

D. Visitor Use

The Sanctuary goal for visitor use management is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities.

Specific management objectives are to: (1) Provide relevant information about Sanctuary regulations, use policies, and standards; (2) collaborate with public and private organizations in promoting compatible uses of the Sanctuary; (3) encourage the public who use the Sanctuary to respect sensitive Sanctuary resources and qualities; and (4) monitor and assess the levels of use to identify and control potential degradation of resources and qualities, and minimize potential user conflicts.

The Sanctuary is currently managed from offices located in Key Largo and Key West, with the headquarters in Marathon.

III. Summary of the Final Regulations

Two sets of existing regulations are eliminated and replaced by this final rule. Specifically, parts 929 and 937 to title 15 of the Code of Federal Regulations, which govern activities in the Key Largo and Looe Key National Marine Sanctuaries, respectively, are removed and replaced by the new regulations which govern the entire FKNMS. Consistent with the FKNMSPA, the Looe Key and Key Largo National Marine Sanctuaries have been incorporated into the FKNMS as Existing Management Areas (§ 922.164(b)(1)).

Organizationally, these final regulations are revised from the proposed regulations in furtherance of the President's Regulatory Reinvention Initiative to, among other things, consolidate duplicative regulatory provisions. Consequently, the new regulations for the most part appear in a new subpart P to 15 CFR part 922 (15 CFR 922.160—922.167) and in Appendixes I through VIII to subpart P. Existing §§ 922.3, 922.42, 922.45, 922.46, 922.49 and 922.50 of 15 CFR part 922 are also applicable to the Sanctuary. In some instances, this rule makes minor revisions to those and other sections of the National Marine Sanctuary Program Regulations at 15 C.F.R. part 922 to make them meld with the new subpart P.

Section 922.160 sets forth the purpose of the regulations—to implement the comprehensive final management plan for the Sanctuary by regulating activities affecting the Sanctuary in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area.

Section 922.161 and Appendix I describe the boundary of the Sanctuary as established by section 5 of the FKNMSPA.

Existing § 922.3 defines terms applicable to all National Marine Sanctuaries. The Marine Protection, Research, and Sanctuaries Act also defines other terms applicable to all National Marine Sanctuaries. The terms ''historical resource,'' and ''sanctuary quality'' were slightly revised to reflect the Sanctuary's definitions as they appeared in the proposed regulations. The modified definitions further clarify the meaning of these terms, which are applicable to all the sanctuaries found in part 922.

Section 922.162 defines terms only applicable to the FKNMS.

Existing § 922.42 specifies that all activities, including fishing, boating, diving, research, and education, are allowed in the National Marine Sanctuaries except to the extent that those activities are restricted or prohibited by subparts F through P of part 922 (in the case of the FKNMS by §§ 922.163, 922.164), subject to any emergency regulation (in the case of the FKNMS under § 922.165), and subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction. This section is intended to assure that if activities are not prohibited or otherwise restricted or conditioned pursuant to this part, or by any other Federal, State, or local authority of competent jurisdiction, then they are expressly allowed within the Sanctuary.

Section 922.163 prohibits a variety of activities within the Sanctuary and in limited instances, outside the Sanctuary, thus making it unlawful for any person to conduct them or cause them to be conducted.

The first activity prohibited is exploring for, developing, or producing minerals or hydrocarbons within the Sanctuary. The FKNMSPA already prohibits these activities. The Sanctuary's significant natural resources and qualities are especially sensitive to potential impacts from outer continental shelf minerals or hydrocarbon activities and should be protected. Specifically, the corals, seagrasses, and mangroves of the Florida Keys and the Sanctuary's water quality are especially vulnerable to oil and gas activities in the area. The prohibition on oil, gas and mineral activities will help protect the Sanctuary's resources and qualities.

This specific prohibition is consistent with the general prohibition on drilling into, dredging or otherwise altering the seabed discussed below. The codification of the statutory prohibitions into the Sanctuary regulations is for regulatory cohesiveness (so that all restrictions or prohibitions found in the statute or imposed pursuant to the statute's authority can be found in one place) rather than to provide any additional protections.

The second activity prohibited is the removal of, injury to, or possession of coral or live rock except as authorized by a Federal or State permit. The intent of this prohibition is to conserve the coral reefs, to protect the biodiversity of the Sanctuary, to protect the habitats of commercially and ecologically important species, and to preserve the natural functional aspects of the coral reef ecosystem.

The third activity prohibited is alteration of, or construction on, the seabed. Such actions as drilling, dredging, and prop dredging are prohibited by this regulation. The seabed and the water over the seabed are the basic elements for all marine ecosystems. This prohibition protects the seabed as well as the resources in and on the seabed, such as shipwrecks, and seagrasses. Exceptions are made for anchoring in manners not otherwise prohibited, traditional fishing activities not otherwise prohibited, installation and maintenance of navigational aids, harbor maintenance, repair and replacement of jetties, and breakwaters, and construction, repair, and replacement of docks and piers.

The fourth activity prohibited is the discharge or deposit of materials or other matter. Exceptions are made for such things as fish baits in connection with and during traditional fishing, biodegradable vessel effluents, graywater, and vessel exhaust and cooling water. The primary intent of this prohibition is to protect the Sanctuary resources and qualities against the harmful effects of land and marine based pollution, particularly vessel source pollution, to reduce and prevent contamination by marine debris and related impacts associated with pollution of the marine environment of the Sanctuary. Together with the prohibition on the alteration of, or construction on, the seabed, this provides a safety net for protection of specific resources and the ecosystem.

The fifth activity prohibited is the operation of vessels in a manner which harms significant Sanctuary resources such as operating a vessel in such a manner as to strike or otherwise injure coral, seagrass, other immobile organism attached to the seabed, or to injure or take wading, nesting, or roosting seabirds or marine mammals. Also specifically prohibited is having a vessel anchored on living coral other than hardbottom in less than 40 feet of water when visibility is such that the seabed can be seen, operating a vessel at a speed greater than idle speed only/no wake within an area designated as idle speed only/no wake, within 100 yards of navigational aids indicating emergent or shallow reefs, residential shorelines, or stationary vessels, within 100 feet of divers flags, and operating a vessel in a manner which endangers life, limb, marine resources, or property.

The sixth activity prohibited is diving without a red and white ''divers down'' flag or a blue and white ''alpha'' flag in Federal waters. The intent of this prohibition on divers in conjunction with the previous restriction on vessel operation is to help prevent injury to humans and facilitate safe, multiple use of the Sanctuary.

The seventh activity prohibited is the release of exotic species. Exotic species can permanently alter a natural ecosystem and its assemblages by such things as out competing indigenous species and preying on indigenous species. The intent of this prohibition is to prevent injury to Sanctuary resources, to protect the biodiversity of the Sanctuary, and to preserve the natural functional aspects of the ecosystem. By protecting the natural ecosystem and assemblages, it also addresses concerns from commercial and recreational users dependent upon the natural ecosystem and assemblages.

The eighth activity prohibited is the tampering with official signs or markers or navigational aids. The signs, markers and navigational aids generally are posted to inform the users about regulations as well as the existence of certain Sanctuary resources, primarily corals and seagrasses, in order to prevent injury to those resources. They also address safety concerns for humans and property. Prohibiting tampering is reasonable and necessary for effective prevention and enforcement of regulations.

The ninth activity prohibited is the removing or injuring of Sanctuary historical resources. Submerged historical resources constitute important, irreplaceable, public resources of the Sanctuary because they contain important information about human heritage, history, and culture. This prohibition is designed to protect these resources and ensure their availability for present and future research, education and other uses compatible with the NMSA and the Abandoned Shipwreck Act (ASA).

The tenth activity prohibited is taking or possessing certain protected wildlife. The Sanctuary is an important staging area, breeding area, and feeding area for a variety of wildlife, including a number of endangered and threatened species. The intent of this prohibition is to protect Sanctuary resources and endangered and/or threatened species.

The eleventh activity prohibited is the possession or use of explosives and electrical charges. The intent of this prohibition is to prevent injury to Sanctuary resources.

The twelfth activity prohibited is the harvest or possession of marine life species (tropical fish and plants), except in accordance with the Marine Life Rule of the Florida Administrative Code reproduced in Appendix VIII to this subpart. The intent of this regulation is to protect Sanctuary resources and biodiversity by adopting relevant portions of the Florida Marine Life rule as a uniform regulation to be applied throughout the Federal and State waters of the Sanctuary.

The thirteenth activity prohibited is interfering with law enforcement officers. The intent of this prohibition is to prevent the obstruction of justice.

Section 922.163 provides certain exemptions from the prohibitions such as when a prohibited activity is conducted by a Federal, State, or local officer while performing enforcement duties and/or while responding to emergencies. Certain activities conducted by the U.S. Department of Defense are also exempt. Also, a prohibited activity may be conducted if specifically authorized by, and conducted in accordance with a National Marine Sanctuary Permit.

Section 922.164 sets forth by Sanctuary zone, restrictions and prohibitions above and beyond those applicable on a Sanctuary-wide basis (most of the Sanctuary is not zoned and, therefore, only the Sanctuary-wide prohibitions of § 922.163 apply). The six type of Sanctuary zones are: (1) Areas to be Avoided (ATBAs); (2) Existing Management Areas; (3) Wildlife Management Areas; (4) Ecological Reserves; (5) Sanctuary Preservation Areas; and (6) Special-use Areas. Details on the location of these zones are specified in Appendices II, III, IV, V and VI to subpart P, respectively. The intent of the zoning regulations is to protect Sanctuary resources, ecosystem and biodiversity, and provide for effective management and facilitation of multiple, compatible uses, consistent with the purposes of the Sanctuary. Activities located within two or more

overlapping Sanctuary zones are concurrently subject to the regulations applicable to each overlapping area.

Section 922.164(a) prohibits the operation of a tank vessel or a vessel greater than 50 meters in registered length in an ATBA. The boundary coordinates for the ATBAs are listed in Appendix VII to this subpart. This prohibition merely codifies into the Sanctuary regulations the prohibition in the FKNMSPA against this activity in the ATBAs. The prohibition should prevent or minimize large or tank vessel groundings on the coral reef, and thus minimize the risk of extensive physical damage, spills and associated, possibly irreparable, injury to Sanctuary resources likely to result from a grounding of a large vessel or tank vessel.

Section 922.164(b) sets forth additional restrictions applicable to Existing Management Areas—areas of the Sanctuary that are already within a resource management area established by NOAA or by another Federal authority of competent jurisdiction, and in need of a level of protection higher than that provided by the Sanctuary-wide prohibitions and restrictions of § 922.163. The Existing Management Areas are the Looe Key and Key Largo National Marine Sanctuaries and the Key West and Great White Heron National Wildlife Refuges. The boundaries of these areas are set forth in Appendix II to subpart P.

The FKNMSPA subsumed the Key Largo and Looe Key National Marine Sanctuaries into the FKNMS. The qualities and values for which those Sanctuaries were originally designated remain and require a continued level of protection above and beyond those applicable Sanctuary-wide. Therefore, consistent with the FKNMSPA, additional restrictions will remain applicable to those two areas. In order to do so, the areas of the two Sanctuaries have been zoned as Existing Management Areas with portions thereof also designated as Sanctuary Preservation Areas and Special-use Areas. Therefore, the special restrictions applicable to the two areas appear in the restrictions applicable to Existing Management Areas, Sanctuary Preservation Areas, and Special-use Areas.

Section 922.164(b)(1) sets forth the special restrictions applicable to the entire Key Largo and Looe Key Existing Management Areas: (i) Removing, taking, damaging, harmfully disturbing, breaking, cutting, spearing or similarly injuring any coral or other marine invertebrate, or any plant, soil, rock, or other material, except commercial taking of spiny lobster and stone crab by trap and recreational taking of spiny lobster by hand or by hand gear which is consistent with these regulations and the applicable regulations implementing the applicable National Marine Fisheries Service Fishery Management Plans; (ii) taking any tropical fish; (iii) fishing with wire fish traps, bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or nets; and (iv) fishing with, carrying or possessing, except while passing through without interruption or for law enforcement purposes: Pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring-loaded guns or similar devices known as spearguns.

Also designated Existing Management Areas are the Great White Heron and Key West National Wildlife Refuge Management Areas. The Refuges are subject to the continuing management and control of the Department of the Interior, notwithstanding the exercise of concurrent regulatory authority by NOAA in the surrounding marine environment in accordance with this part. The development of these Sanctuary regulations was the result of coordination with the Department of the Interior, U.S. Fish and Wildlife Service. Such coordination will continue in the implementation and enforcement of these rules and regulations in a manner that complements the Sanctuary final management plan as well as existing refuge management plans. The Sanctuary's interpretive enforcement approach will be utilized in these areas to supplement existing enforcement by the U.S. Fish and Wildlife Service.

Section 922.164(b)(2) incorporates existing U.S. Fish and Wildlife Service restrictions which prohibit waterskiing, operating personal watercraft, and operating airboats within the Great White Heron and Key West National Wildlife Refuge Management Areas into Sanctuary regulations. By incorporating those provisions into the Sanctuary regulations, civil penalties can be sought for violation of Sanctuary regulations. Presently, only criminal sanctions, which are more difficult to prove and not always the best means of obtaining compliance, are available.

Section 922.164(c) sets forth the procedures for designating and changing the designation of all or part of the marine portions of the 27 Wildlife Management Areas listed in Appendix III as ''idle speed only/no-wake'', ''no motor'', ''no access buffer'' or ''closed'' areas. Wildlife Management Areas are areas established for the management, protection, and preservation of wildlife resources, including such areas established for the protection and preservation of endangered or threatened species or their habitats, within which access is restricted to minimize disturbances to wildlife and to ensure protection and preservation consistent with the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources. Only the marine portions of these areas are within the Sanctuary, the land portions are under the Department of the Interior's and the State of Florida's jurisdiction and protection.

An ''idle speed only/no-wake zone'' means a portion of the Sanctuary where the speed at which a boat is operated may be no greater than 4 knots or may not produce a wake. A ''no motor zone'' means an area of the Sanctuary where the use of internal combustion motors is prohibited. A vessel with an internal combustion motor may access a no motor zone only through the use of a push pole, paddle, sail, electric motor or similar means of operation but is prohibited from using it's internal combustion motor. A ''no-access buffer zone'' means a portion of the Sanctuary where vessels are prohibited from entering regardless of the method of propulsion. ''Closed'' means all entry or use is prohibited.

The regulations require the Director or designee, in cooperation with other Federal, State, or local resource management authorities, as appropriate, to effect such designations by posting official signs conspicuously, using mounting posts, buoys, or other means according to location and purpose, at appropriate intervals and locations. Appendix III also sets forth the access restrictions applicable to the marine portions of the Wildlife Management Areas. The intent of these rules is to protect wildlife resources from injury or harmful disturbance within sensitive areas and habitats. It is also the intent of these restrictions to protect Sanctuary resources and qualities through coordination with the Department of the Interior and others in a manner that recognizes and complements the existing management of the land portions of these areas. For example, a closure of a beach above the mean high water by the Department of the Interior is complemented by a closure of adjacent marine areas in the Sanctuary regulations. More importantly, the Sanctuary's interpretive enforcement approach will be utilized in these areas to supplement existing enforcement by the Department of the Interior. As discussed above, civil sanctions are available to address violations of

Sanctuary regulations while only criminal sanctions are available to address violations of the Interior's rules.

Section 922.164(d) sets forth prohibitions applicable to activities conducted within Ecological Reserves and Sanctuary Preservation Areas. Ecological Reserve means an area of the Sanctuary consisting of contiguous, diverse habitats, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, intended to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary. Appendix IV sets forth the geographic coordinates of the Western Sambos Ecological Reserve-the only Ecological Reserve established by the final regulations. Another Ecological Reserve-the Dry Tortugas Ecological Reserve will be proposed by a separate rulemaking.

Sanctuary Preservation Area means an area of the Sanctuary that encompasses a discrete, biologically important area, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Appendix V sets forth the geographic coordinates of the 18 Sanctuary Preservation Areas established by the final regulations.

Above and beyond the activities prohibited Sanctuary-wide, the following activities are prohibited in the Ecological Reserves and Sanctuary Preservation Areas: (i) Discharging or depositing any material or other matter except cooling water or engine exhaust; (ii) possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities. However, fish, invertebrates, and marine plants may be possessed aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such resources can be shown not to have been harvested within, removed from, or taken within, the Ecological Reserve or Sanctuary Preservation Area, as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through such reserves or areas; (iii) except for catch and release fishing by trolling in the Conch Reef, Alligator Reef, Sombrero Reef, and Sand Key Sanctuary Preservation Areas, fishing by any means. However, gear capable of harvesting fish may be aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such gear is not available for immediate use when entering and during transit through such Ecological Reserve or Sanctuary Preservation Area, and no presumption of fishing activity shall be drawn therefrom (baitfishing by net for ballyhoo in SPAs will be allowed pursuant to a Sanctuary permit); (iv) touching living or dead coral, including but not limited to, standing on a living or dead coral formation; (v) placing any anchor in a way that allows the anchor or any portion of the anchor apparatus (including the anchor, chain or rope) to touch living or dead coral, or any attached organism. When anchoring dive boats, the first diver down must inspect the anchor to ensure that it is not touching living or dead coral, and will not shift in such a way as to touch such coral or other attached organisms. No further diving shall take place until the anchor is placed in accordance with these requirements; (vi) anchoring instead of mooring when a mooring buoy is available or anchoring in other than a designated anchoring area when such areas have been designated and are available; (vii) except for passage without interruption through the area, for law enforcement purposes, or for purposes of monitoring a temporary access restriction or closure, violating a temporary access restriction imposed by the Director.

Section 922.164(d)(2) authorizes the Director to temporarily restrict access to any portion of any Sanctuary Preservation Area or Ecological Reserve if the Director, on the basis of the best available data, information and studies, determines that a concentration of use appears to be causing or contributing to significant degradation of the living resources of the area and that such action is reasonably necessary to allow for recovery of the living resources of such area. The Director must provide for continuous monitoring of the area during the pendency of the restriction. The Director must provide public notice of the restriction by publishing a notice in the Federal Register, and by such other means as the Director may deem appropriate. The Director may only restrict access to an area for a period of 60 days, with one additional 60-day renewal. The Director may restrict access to an area for a longer period pursuant to a notice and opportunity for public comment rulemaking under the Administrative Procedure Act. Such restriction will be kept to the minimum amount of area necessary to achieve the purposes thereof.

It should be noted that § 922.164(d) will not take effect in State waters before July 1, 1997, to allow the State of Florida Marine Fisheries Commission to complete its rulemaking process related to the Sambos Ecological Reserve and those Sanctuary Preservation Areas located in State waters. If the Commission's rule is not substantively the same as NOAA's, then NOAA will modify these regulations to conform with those of the State or will consult with the State on whether the non-conforming portions of the Sanctuary regulations should be withdrawn from applying in State waters.

The intent of the establishment of, and regulation of uses within, the Sanctuary Preservation Areas is to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. The intent of the establishment of, and regulation of uses within, the Ecological Reserves is to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary.

Section 922.164(e) sets forth the procedures and criteria pursuant to which the Director or designee may set aside discrete areas of the Sanctuary as Special-use Areas, designate such areas as ''recovery areas'' to provide for the recovery of Sanctuary resources from degradation or other injury attributable to human uses; ''restoration areas'' to provide for restoration of degraded or otherwise injured Sanctuary resources; ''research-only areas'' to provide for scientific research or education relating to protection and management, through the issuance of a Sanctuary General permit for research; or ''facilitated use areas'' to provide for the prevention of use or user conflicts or the facilitation of access and use, or to promote public use and understanding, of Sanctuary resources through the issuance of special-use permits, as appropriate, and impose access and use restrictions to

protect the Sanctuary resources and qualities and allow for multiple, compatible uses within the Sanctuary. Special-use Areas must be no larger than the size the Director deems reasonably necessary to accomplish the applicable objective. Appendix VI sets forth the boundaries of the four Special-use Areas established by the final regulations. All four of these areas are ''research-only areas''.

Persons conducting activities within any Special-use Area are required to comply with the access and use restrictions specified in § 922.164(e)(3) and made applicable to such area by means of its designation as a ''recovery area,'' ''restoration area,'' ''research-only area,'' or ''facilitated-use area.'' Except for passage without interruption through the area or for law enforcement purposes, no person may enter a Special-use Area except to conduct or cause to be conducted the following activities: (i) In such area designated as a ''recovery area'' or a ''restoration area'', habitat manipulation related to restoration of degraded or otherwise injured Sanctuary resources, or activities reasonably necessary to monitor recovery of degraded or otherwise injured Sanctuary resources; (ii) in such area designated as a ''research only area'', scientific research or educational use specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a valid National Marine Sanctuary General or Historical Resources permit; or (iii) in such area designated as a ''facilitated-use area'', activities specified by the Director or specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a valid Special-use permit.

The Director may modify the number of, location of, or designations applicable to, Special-use Areas by publishing in the Federal Register, after notice and an opportunity for public comment in accordance with the Administrative Procedure Act, an amendment to Appendix VI, except that, with respect to such areas designated as a ''recovery area,'' ''restoration area,'' or ''research only area,'' the Director may modify the number of, location of, or designation applicable to, such areas by publishing a notice of such action in the Federal Register if the Director determines that immediate action is reasonably necessary to: (1) Prevent significant injury to Sanctuary resources where circumstances create an imminent risk to such resources; (2) initiate restoration activity where a delay in time would significantly impair the ability of such restoration activity to succeed; or (3) initiate research activity where an unforeseen natural event produces an opportunity for scientific research that may be lost if research is not initiated immediately. If the Director determines that a notice of modification must be promulgated immediately, the Director must, as part of the same notice, invite public comment and specify that comments will be received for 15 days after the effective date of the notice. As soon as practicable after the end of the comment period, the Director must either rescind, modify or allow the modification to remain unchanged through notice in the Federal Register.

Section 922.165 provides that where necessary to prevent, minimize, or minimize the imminent risk of destruction of, loss of, or injury to a Sanctuary resource, any and all activities are subject to immediate temporary regulation, including prohibition. Any such temporary regulation may be in effect for up to 60 days with one 60-day extension. Additional or extended action is subject to the provisions of the Administrative Procedure Act.

Section 922.45 sets forth the maximum civil penalty for violating the NMSA or FKNMSPA, the regulations or any permit issued pursuant thereto—$100,000. Each day of a continuing violation constitutes a separate violation. Regulations setting forth the procedures for civil penalties, permit sanctions, use of written warnings and release or forfeiture of seized property appear at 15 CFR part 904.

Section 922.46 repeats the provision in section 312 of the NMSA that any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs, damages and interest resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs, damages and interest resulting from destruction, loss or injury.

The purpose of §§ 922.45 and 922.46 is to further notify the public of the liability for violating a Sanctuary regulation, permit issued pursuant thereto, or the NMSA, or for causing the destruction, loss of, or injury to Sanctuary resources.

Section 922.166(a) sets forth the procedures for applying for a National Marine Sanctuary General Permit to conduct a prohibited activity and the criteria governing the issuance, denial, amendment, suspension and revocation of such permits. A General Permit may be issued by the Director or designee if he or she finds that the activity will: Further research or monitoring related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; or otherwise further Sanctuary purposes, including facilitating multiple use of the Sanctuary, to the extent compatible with the primary objective of resource protection. The Director cannot issue a General Permit without finding that: The applicant has the professional qualifications and financial resources to conduct and complete the activity; the duration of the activity is no longer than necessary and the methods and procedures are appropriate to achieve the stated purpose; the activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities; it is necessary to conduct the activity within the Sanctuary to achieve its purposes; the reasonably expected end value of the activity will further Sanctuary goals and purposes and outweighs any potential adverse impacts of the activity on Sanctuary resources. For activities proposed to be conducted within an Existing Management Area, a Wildlife Management Area, an Ecological Reserve, a Sanctuary Preservation Area, or a Special-use Area, the Director cannot issue a Permit unless he or she also finds that such activities will further and are consistent with the purposes for which such area was established.

Section 922.166(b) sets forth the application procedures and issuance criteria for National Marine Sanctuary Survey/Inventory of Historical Resources Permits. Such permits are not required if such survey/inventory activity does not involve any activity prohibited by §§ 922.163 or 922.164. If a survey/inventory activity will involve test excavations or removal of artifacts or materials for evaluative purposes, a Survey/Inventory of Historical Resources Permit is required. A Survey/Inventory permit may be issued if the activity will be non-intrusive, not include any excavation, removal, or recovery of historical resources and not result in destruction of, loss of or injury to Sanctuary resources or qualities. Such permit may also be issued if the activities are intrusive but will involve no more than the minimum manual alteration of the seabed and/or the removal of artifacts or other material necessary for evaluative purposes and

will cause no significant adverse impacts on Sanctuary resources or qualities. Such permit must be determined to be in the public interest and be consistent with the Programmatic Agreement Among NOAA, the Advisory Council on Historic Preservation, and the State of Florida on Submerged Cultural Resources (hereinafter SCR Agreement).

Pursuant to § 922.166(c), a National Marine Sanctuary Research/Recovery of Sanctuary Historical Resources Permit may be issued for a person to conduct any activity prohibited by §§ 922.163 or 922.164 involving the research/recovery of Sanctuary historical resources. Such research/recovery of resources must be determined to be in the public interest as described in these regulations and the SCR agreement. Intrusive research and/or recovery may destroy the resources and therefore the consideration of such permits will be based upon a balancing of factors and criteria to determine whether the goals of preservation, research, education, and public access are better served by permitting this type of activity as opposed to leaving the historic resources in place.

Pursuant to § 922.166(d) (1) and (2), National Marine Sanctuary Special-use permits may be issued to conduct a commercial or concession-type activity prohibited by §§ 922.163 or 922.164. Such permits may be issued to establish conditions of access to and use of any Sanctuary resource, or promote public use and understanding of any Sanctuary resources. No permit may be issued unless the proposed activity is compatible with the purposes for which the Sanctuary was designated and can be conducted in a manner that does not destroy, cause the loss of, or injure and Sanctuary resource; and for the deaccession-transfer of Sanctuary Historical Resources, unless the activity will be conducted in accordance with all requirements of the SCR Agreement.

Section 922.166(d)(3) allows the Director to assess and collect fees for the conduct of any activity authorized by a Special-use permit issued pursuant to this section. No Special-use permit can be effective until all assessed fees are paid. This section also provides the criteria for determining the appropriate costs and fees.

Section 922.166(e) specifies the information which must be submitted when applying for a permit and the address for submissions and for submitting supplementary information.

Section 922.166(f) states that a permit may be issued for a period not exceeding five years. Renewals must follow the same procedures as those for applying for a new permit. All permits will be reviewed annually to determine the permittee's compliance.

Section 922.166(g) states that the Director may amend, suspend, or revoke a permit for good cause. Further, the Director may deny a permit if the permittee or applicant has acted in violation of a previous permit, or for other good cause. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

Pursuant to § 922.166(h), the applicant for or holder of a Sanctuary permit may appeal the denial conditioning, amendment, suspension or revocation of a permit pursuant to the procedures set forth in § 922.50.

Pursuant to § 922.166(i), a permit issued other than a Special-use permit is nontransferable. Special-use permits may be transferred, sold, or assigned with the written approval of the Director as described in this section.

Section 922.166(j) requires that permits (or a copy thereof) issued pursuant to these regulations must be maintained in legible condition on board all vessels or aircraft used in the conduct of the permitted activity.

Pursuant to § 922.166(k), any permit issued pursuant to this section is subject to the following terms and conditions: all permitted activities will be conducted in a manner that does not destroy, cause the loss of, or injury Sanctuary resources or qualities, except as specifically authorized; the permittee agrees to hold the United States harmless against any claims arising from permitted activities; all necessary Federal, State and local permits from all agencies with jurisdiction over the proposed activities shall be secured before commencing field operations.

Pursuant to § 922.166(l), in addition to § 922.166(k), the permits for research/recovery of historical resources require that a professional archaeologist be in charge of the research-recovery planning, field recovery operations, and research analysis; an agreement with a conservation laboratory shall be in place before field recovery operations begin; an approved nautical conservator shall be in charge of conservation activities; and a curation agreement with a museum or facility shall be in place before commencing field operations which addresses the curation, public access, display and maintenance of the recovered historical resources. Deaccession/transfer of historical resources require a Special-use permit pursuant to paragraph (d). Such Special-use permits must also be executed in accordance with the requirements of the SCR Agreement.

In addition to the paragraphs above, § 922.166(m) stipulates that any permit issued pursuant to this section is subject to such other terms and conditions as the Director deems necessary for the purposes for which the Sanctuary is designated, including but not limited to: Any data or information obtained under the permit shall be made available to the public; a NOAA official shall be allowed to observe any activity conducted under the permit, the permittee shall submit one or more reports on the status, progress or results of activity authorized under the permit; the permittee shall submit an annual report; the permittee shall purchase and maintain general liability insurance or other acceptable security against potential claims for loss.

Section 922.167 sets forth procedures for requesting certification of preexisting leases, licenses, permits, approvals, other authorizations or rights to conduct a prohibited activity in existence on the effective date of these regulations authorizing the conduct of an otherwise prohibited activity. The holder of such authorization must notify the Director within 90 days of the effective date of these regulations of the existence of such authorization and request certification of such authorization; the holder must comply with other provisions of this section and must comply with any terms and conditions on the exercise of such authorization by the Director to achieve the purposes for which the Sanctuary was designated. The permit holder may continue the authorized activity without being in violation of these regulations pending final agency action on his or her certification request. Requests for findings or certifications must be addressed to the FKNMS office in Marathon, Florida. The Director may request additional information from the certification requester as is deemed necessary to determine if the activity is consistent with the purposes for which the Sanctuary was designated. This section also provides the appeal process for any action conditioning, amending, suspending, or revoking certifications. Any amendment, renewal or extension made after the effective date of this regulation is subject to the provisions of § 922.168.

Section 922.49 addresses notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity in the FKNMS. A person may conduct an activity prohibited by these regulations if such activity is authorized by any valid Federal, State or local lease, permit, license, approval, or other authority after the effective date of these

regulations provided that the applicant notifies the Director in writing within 15 days of filing the application or the effective date of these regulations, whichever is later; the applicant complies with the other provisions of this section; the Director notifies the applicant and authorizing agency that he or she does not object to the issuance of the authorization; and the applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

Pursuant to paragraph (b), any potential applicant for an authorization described in this part may request the Director to issue a finding as to whether the activity is prohibited by §§ 922.163 or 922.164. Paragraph (c) provides that applications be mailed to the address found, in the case of the FKNMS, in subpart P. Paragraph (d) authorizes for the Director to request additional information as necessary for the applicant to enable a determination whether to object to issuance of an authorization described in paragraph (a) above. Paragraph (e) requires the Director to notify the agency to which the application was made in writing whether he or she has an objection to issuance and what terms and conditions he or she deems necessary to protect Sanctuary resources.

Paragraphs (f) and (g) provide the administrative ability for the Director to amend the terms and conditions necessary to protect Sanctuary resources and qualities whenever additional information becomes available and extend any time limit for good cause. Paragraph (h) specifies that an applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the provisions of § 922.50.

Section 922.50 sets forth the appeals process for administrative actions related to the issuance for permits except for enforcement actions.

Major Issues Addressed in Comments and NOAA's Responses

On March 30, 1995 NOAA published a proposed Designation Document and proposed implementing regulations and announced the availability of the draft management plan and environmental impact statement (DMP/EIS) (60 FR 16399). Public hearings to receive comments on the proposed regulations, and the DMP/EIS were held on November 1 in Miami; November 3 in Key Largo; November 6 in Marathon; November 7 in Key West; November 9 in St. Petersburg; and November 14 in Silver Spring, MD.

The nine month public review period ending on December 31, 1995, resulted in NOAA receiving over 6,400 statements of public comment on the DMP/EIS. In addition, the Sanctuary Advisory Council (SAC) provided NOAA with its comments on the plan. All comments received on the DMP/EIS were recorded in a computerized database and assigned a unique comment identification number. These records consist of the reviewer's name; company, organization, or agency; address; a synopsis of the comment; and NOAA's response. Details of this public review process are provided in the general introduction to Volume I of the final management plan and environmental impact statement (FMP/EIS).

Comments were received about many aspects of the management plan and EIS, however, a majority of the comments focused on a limited number of issues. Comments were received from diverse groups and individuals, including private businesses and organizations, elected officials, the SAC and representatives of Federal, State, and county agencies.

NOAA received a number of specific comments on the DMP/EIS, including recommendations on strategies, activities, and priority levels. Some comments were specific enough to cite page numbers and recommended language revisions. NOAA appreciates the level of public comment and has revised the document based on a balance of these comments in light of the requirements of the NMSA, FKNMSPA, NEPA, and other applicable laws. Consistent with the requirements of NEPA and the Administrative Procedure Act (APA), this section discusses the significant issues and substantive concerns that the commentors have brought to NOAA's attention.

All comments received by NOAA in response to the Federal Register notices and public hearings were considered and, where appropriate, were incorporated. A summary of the significant comments on the proposed regulations and DMP/EIS and NOAA's responses is set forth below. The comments are also presented and responded to in the administrative record.

The Need for the Florida Keys National Marine Sanctuary

Comment: There is no need for a Sanctuary.

Response: NOAA disagrees. In 1990, Congress enacted the FKNMSPA in recognition of the need to provide comprehensive protection and management of the diverse marine environments of the Florida Keys. These environments possess important and unique living and non-living resources, including seagrass meadows, mangrove islands, and extensive living coral reefs. These habitats support rich biological communities, possessing extensive conservation, recreational, commercial, ecological, historical, research, educational, and aesthetic values which give the area special national significance. Congress found these environments to be the marine equivalent of tropical rain forests in that they support a rich level of biological diversity, are fragile and easily susceptible to damage from human activities, and possess high value to human beings if properly conserved. To this end, the Act expressly prohibits oil drilling within the Sanctuary and prevents tank vessels or ships greater than 50 meters in length from entering the Area to be Avoided within the Sanctuary boundary.

Past resource management efforts in the Florida Keys have only focused on small portions of the coral reef ecosystem in a checkerboard fashion. These efforts have not taken a holistic approach to protecting the marine environment of the Florida Keys and as a consequence, the coral reef resources have declined steadily over the past two decades. Piecemeal management of the marine resources of the Florida Keys, especially the coral reefs, seagrass communities, hardbottom habitats, and mangrove fringed shorelines, combined with a continued decline in the quality of the water that flows over these habitats, has resulted in a threat to the stability of the marine environment in the Keys. Consequently, since the economy of the Florida Keys is so closely linked to a healthy marine environment, the status quo approach to managing the marine resources of the Keys could result in an economic collapse in the near future.

The Act directed NOAA to develop a comprehensive management plan and implementing regulations for the Sanctuary in consultation with appropriate Federal, State and local governments and with the SAC. Pursuant to this mandate, NOAA developed a comprehensive management plan and regulations to protect and manage the living and non-living resources of the Sanctuary. Regulations were developed to protect Sanctuary resources and minimize conflicts among the various users of those resources. For example, establishing zones with special restrictions to protect habitat in those zones and prohibiting potentially

harmful activities such as prop dredging and prop scarring throughout the Sanctuary are effective management tools. Regulations supplement, but do not duplicate, existing management authorities with jurisdiction in the Sanctuary.

The FKNMS will provide a comprehensive and coordinated regime to protect, manage and conserve the nationally significant resources of the Florida Keys so they may be enjoyed by both present and future generations.

The Need for Management of the Sanctuary

Comment: Many commentors asserted that the Sanctuary will add another costly layer of bureaucracy, while others commented on the benefits of integration and the role the FKNMS has played in interagency planning.

Response: The Sanctuary is not an extra layer of bureaucracy and there are many ways in which the National Marine Sanctuary Program will improve management of the Keys' marine resources. National Marine Sanctuaries are designated to protect marine resources that are unique and possess high national significance. Boundaries of National Marine Sanctuaries only extend to the mean-high tide mark and do not include land above that mark. The concept of a National Marine Sanctuary as a ''place'' seems to be overlooked by some of the public. The Sanctuary is not a thing or an ''extra layer of bureaucracy'; and it is not a collection of agencies, environmental groups, or user groups, it is a very special place, deserving of protection for the use and enjoyment of present and future generations. The waters and marine resources surrounding the Keys are unlike any other on earth and they need and deserve our immediate attention. We will lose our coral reefs if the declines we've witnessed over the past two decades continue.

Congress, through the FKNMSPA, designated the Sanctuary, drew a line around the Keys and declared to the world that the marine resources of the Keys are special and unique. The Act also delegated to NOAA, an agency with experience in managing marine protected areas where the economy is highly dependent on healthy marine resources, the responsibility to manage the Sanctuary and make the Sanctuary part of a national program internationally known for its ability to manage marine resources for multiple uses, both recreational and commercial; a program that emphasizes an educational approach to management. The FKNMSPA also places an important safeguard on the agency: ''Nothing in this Act is intended to restrict activities that do not cause an adverse effect to the resources or property of the Sanctuary or that do not pose harm to users of the Sanctuary.''

The National Marine Sanctuary Program is not new to the Florida Keys. The program has had a very successful 20 year history in the Keys, protecting some of the most popular coral reef dive sites in the world. The Key Largo National Marine Sanctuary, designated in 1975, protects all the coral reefs along a 20 mile stretch in the upper Keys. The relationship of the Sanctuary with the business community has been excellent. The Key Largo Chamber of Commerce continues to be a tremendous supporter of the Sanctuary where divers, dive operators, recreational and charter fishermen, and commercial fishermen continue to work and play.

Looe Key National Marine Sanctuary was designated in 1981, following a lengthy designation process where local businesses, divers, and commercial fishermen in the vicinity of Big Pine Key reacted in opposition. Rumors, misinformation, and a basic misunderstanding of what a ''National Marine Sanctuary'' actually is, were the fuels that fired lengthy debates. Shortly after Looe Key became operational and management measures were implemented, many of the fears such as commercial fishermen being ''put out of business'' disappeared. A good working relationship was established with the regular users of the Looe Key Sanctuary and businesses dependent on a healthy coral reef continued to flourish. As a result of good management, in 1985, a travel writer for the Miami Herald declared Looe Key as one of the top ten dive destinations in the world.

During the past 15 years the Looe Key and Key Largo National Marine Sanctuaries have been used as models for managing marine protected areas, both domestically and internationally. This reputation was well known to the authors of the FKNMSPA that was passed to designate the Sanctuary.

The National Marine Sanctuary Program protects and manages Sanctuary resources for their continued use by present and future generations. A goal of National Marine Sanctuaries is to facilitate compatible use of marine resources by businesses that are economically dependent upon them, to the extent those uses are compatible with the primary objective of resource protection. This is the first step toward sustainability of this marine area for present and future generations.

The Key Largo and Looe Key National Marine Sanctuaries make up about 23 linear miles of the 220 mile long coral reef tract along the Florida Keys. The designation of the FKNMS provides resource protection to the remaining 197 miles of coral reef and marine ecosystem that were not previously protected. This is not an extra layer of bureaucracy because prior to the Sanctuary's designation little comprehensive resource protection management existed.

National Marine Sanctuaries are known for their integrated comprehensive management through establishing partnerships. In Florida, the Sanctuary Program started ''reinventing government'' in 1980, by establishing a cooperative agreement with the State of Florida, Department of Natural Resources, for the management of the Key Largo National Marine Sanctuary and later, the Looe Key National Marine Sanctuary. These were areas located entirely in Federal waters, but managed by State staff, through 100 percent Federal (NOAA) funding. Today, more than half of the Sanctuary staff are State employees paid entirely by Federal funds, including the education staff, Sanctuary officers, and the lower Florida Keys' administration.

The concept of interagency partnerships has been expanded in the management plan for the FKNMS. Dozens of representatives from local, State, and Federal agencies came to the table to assist in the development of the most comprehensive management plan ever attempted in a marine protected area. They also assisted in the development of the National Marine Sanctuary Program's first water quality protection plan. As a special place, the Keys are deserving of the best kind of management that could be afforded.

There are many agencies involved in various management activities in the Keys. However, these activities have not been integrated in the past, and consequently there has not been a holistic approach to managing the fragile marine resources of the Keys. The potential benefits of integrated management of marine resources are numerous including better protection of the marine resources, savings to tax payers by agencies sharing resources, less duplication of efforts, opportunities for increased interagency coordination, and the list goes on.

The regulations do not usurp the authority or jurisdiction within the Sanctuary boundary of other agencies to impose regulations more protective of Sanctuary resources than the Sanctuary regulations. The State will continue to have that authority in State waters and other Federal laws, such as the Magnuson-Stevens Fisheries Conservation and Management Act, will

continue to apply. However, other agencies cannot authorize a violation of Sanctuary regulations, just as the Sanctuary cannot authorize a violation of State or Federal agency regulations.

The FKNMSPA prohibits oil, gas and mineral development within the Sanctuary and prohibits tank vessels or ships greater than 50 meters in length from entering the Area to be Avoided within the Sanctuary boundary. No other management program provides this level of comprehensive protection to the marine resources (e.g., seagrasses, hard bottoms, and coral reefs) of the Florida Keys, or provides the legislative mandate and authority to holistically manage and protect all of the marine communities as an ecosystem. This is a charge given specifically to NOAA and is not redundant of other management programs, nor is it an extra layer of bureaucracy.

Furthermore, NOAA has developed regulations that complement, rather than duplicate, existing authorities. In some cases, NOAA regulations supplement and fill gaps in existing authorities. To this end, NOAA has integrated its planning efforts with the Federal, State, and local agencies in the Florida Keys. This will improve management coordination between the agencies and will lessen the amount of agency overlap in key management areas such as education, research, enforcement, damage assessment, and emergency response. Through integrated planning and implementation, the FKNMS will, at a minimum, streamline the use of public funds and programs to achieve resource protection. This will improve coordination between the various agencies responsible for management of the marine environment in the Sanctuary. Increased agency coordination will benefit Sanctuary resources and the public's use of those resources.

Coordination of Fisheries Management

Comment: The fisheries protocol should not be implemented because it will add another layer of regulations.

Response: NOAA disagrees. The existing fisheries management authorities will continue to manage fisheries under State law, the Magnuson Act, and other Federal law. However, there are three separate sets of fisheries regulations within the boundary of the Sanctuary and coordination of the fishing regulations within the Sanctuary was identified as a goal early in the scoping process. Under the current system, there is confusion in the fishing community which leads to less compliance by the public as they may not understand which regulations apply to a specific geographical area. Uniform regulations would make it easier for the fisherman to comply with the rules and for the agencies to enforce them. This management action will have a positive result on fisheries management by State and Federal agencies. The net result will be beneficial to Sanctuary resources and to the public. Under the protocol, the existing authorities may accomplish this goal under Sanctuary regulations or their own respective authorities. The existing fishery management authorities and NOAA may agree to develop uniform fishing regulations, but they can only be implemented as Sanctuary regulations if there is consensus. The establishment of a consistent set of fishing regulations for the Sanctuary will not result in a fourth set of regulations.

Funding

Comment: There were a variety of comments on the topic of funding of the FKNMS. Some commentors suggested the Sanctuary should be given the necessary funding to implement the management plan and its goals. Other commentors stated NOAA will never have adequate funding to implement all of the programs outlined in the management plan, implying that NOAA could never comprehensively manage the entire Sanctuary. Others suggested that the funding for the Sanctuary be totally directed at solving water quality issues before implementing any other management programs. Suggestions were made that Florida Tourist Development Council (TDC) ''bed tax'' funds be used for managing Sanctuary activities.

Response: Clearly, implementation of all the programs contained in the management plan would require more funding than the Sanctuary can anticipate presently, or in the near future. However, the management plan is comprehensive and includes suggested actions for the near and long terms. The plan offers a wide variety of management options to address various and diverse management problems in order to give Sanctuary managers the ability to select the most cost effective management tools to address immediate and future problems. It is not NOAA's intent to request funding for immediate implementation of all the management programs outlined in the management plan, but rather use it as a guide for immediate and future plans of action, including the effective use of human and financial resources.

Additionally, the human and financial resource costs for implementing the action plans established to focus Sanctuary management efforts will be shared among the participating Federal, State, and local agencies responsible for various activities. For example, Monroe County receives Boating Improvement Fund allocations that are designed to enhance boating and have specifically been applied to channel/reef marking needs in the Sanctuary. Further, Sanctuary volunteers perform tasks that benefit the goals at a substantial savings to the program. Finally, in addition to annual appropriations, the Sanctuary has the statutory authority to receive donations to support programs. These funds could be received from foundations, non-profit organizations, the Sanctuary Friends organization and others.

NOAA disagrees that all funding should only be used to address water quality or any other single issue within the Sanctuary. Congress, through the FKNMSPA, directed the Secretary of Commerce to develop a comprehensive plan to manage the Sanctuary and gave specific directions as to what should be considered in the development of the plan. Many of the impacts affecting the health of the coral reef community arise from direct, physical injuries that can be lessened with the implementation of the comprehensive management plan. Additionally, the FKNMSPA requires that EPA, along with the State and NOAA, address Sanctuary water quality issues. Many of these management actions will take years to implement and their positive results will not be realized for some years into the future. By implementing the comprehensive management plan, the FKNMS will be able to address some of the immediate threats confronting the coral reef community as a result of direct human activity.

The State of Florida determines the use of Florida TDC funding (bed tax) for management activities.

User Fees

Comment: Some reviewers raised concern regarding the concept of user fees to fund various programs within the Sanctuary. While some commentors were supportive of the concept, the majority of commentors were against funding Sanctuary management through user fees. A small number of reviewers raised concern that the concept was still contained in the draft plan following a highly publicized workshop on user fees to fund the management of National Marine Sanctuaries where NOAA publicly announced it was not pursuing obtaining the general legislative authority to charge ''user fees'' to manage Sanctuaries.

Response: NOAA acknowledges that the concept of charging user fees to fund Sanctuary management is not popular, particularly among user groups. The strategy (B.8) for charging user fees to fund the management of the FKNMS has been dropped from the action plans in the FMP/EIS. There are no regulations authorizing the collection of user fees for general access to, or use of, the Sanctuary.

The process used to develop the draft management plan allowed all suggestions to be considered for the draft plan. The concept of user fees was suggested by some during the planning process and remained in the draft plan following the ''user fee workshop'' because of the process used to develop the draft plan. Considering that some were in favor of ''user fees,'' NOAA felt it was necessary to get public comment on the concept in the draft plan.

Many innovative sources of alternative funding have been identified by the public in the workshop and otherwise. NOAA will work with the SAC to explore some of these options.

Ecosystem-Based Approach

Comment: There were conflicting comments on what NOAA's role should be in managing Sanctuary resources. Some recognized that NOAA has done a good job of managing the coral reefs within the Key Largo and Looe Key National Marine Sanctuaries and suggested that NOAA should focus its management on the coral reef tract. Some of these same reviewers pointed out that the primary cause of water quality decline in the Florida Keys was originating from water management and water quality problems in mainland South Florida and the resultant decline in water quality in Florida Bay. In some instances, the Federal Government was blamed for the cause of water quality decline in south Florida. Some reviewers stated NOAA could not have any influence on the water quality problems that were originating outside the boundary of the Sanctuary.

Other reviewers pointed to the decline of water quality in the near-shore waters of the Florida Keys as a result of improper waste water treatment facilities and poor management of storm water runoff and that NOAA should focus its management on these water quality problems.

Other reviewers recognized the importance of NOAA's role in ecosystem management and the significance of the authority that the FKNMS has to address water quality issues that originate both within its boundary, as well as those problems that originate outside and upstream of the Sanctuary. These reviewers were supportive of NOAA's active role in the South Florida Ecosystem Restoration Task Force and the Governor's Commission for a Sustainable South Florida.

Response: In light of its experience of the resource protection accomplished at Key Largo and Looe Key National Marine Sanctuaries, its role in ecosystem management in South Florida, and directions under the NMSA and the FKNMSPA, NOAA will continue to take an ecosystem based management approach in this Sanctuary.

The FKNMSPA directed the Federal Government and the State of Florida to develop a comprehensive program to reduce pollution in the waters offshore the Florida Keys to protect and restore the water quality, coral reefs, and other living marine resources of the Florida Keys environment. The FKNMSPA and NMSA direct NOAA's development of a comprehensive ecosystem management plan rather than one based solely on the coral reef tract. In order to be successful, Sanctuary managers must be able to address impacts that occur across the range of habitats that comprise the coral reef community in an ecosystem-based management approach. This is especially important in addressing issues that influence the quality of the water that affects the marine communities of the Sanctuary. Between 1982 and 1989, NOAA sponsored research projects that helped characterize the movement of water in and around the two existing Sanctuaries. The studies concluded that a portion of the water that influences the coral reef flows from Florida Bay and the Keys, before it mixes with water from the Florida Current in the vicinity of the reef tract. Scientists agree that the sources of the decline in water quality that influence the health of the coral reef resources originate upstream of the reef tract, in the direction of the Keys and Florida Bay. No matter how intensely NOAA manages activities on the coral reef, the health of the corals will continue to decline until the sources of the water quality decline upstream are addressed in a comprehensive manner.

The designation of the FKNMS gave NOAA a role in the development and the implementation of a water quality protection program with EPA and the State. Sanctuary legislation directed EPA, the State and NOAA to look beyond the boundary of the Sanctuary toward the problems occurring upstream. The designation also gave NOAA the ability to manage in a holistic manner, all of the marine communities that are important to maintaining the biodiversity of the Sanctuary. This was the first step toward ecosystem management, the ability to manage all the marine communities of the coral reef component of the south Florida ecosystem.

NOAA disagrees with comments that it cannot influence, or does not have a role in addressing, the water quality problems originating outside the boundary of the Sanctuary, in Florida Bay, and mainland South Florida. The designation of the FKNMS has given NOAA a prominent role in the South Florida Ecosystem Restoration Task Force whose objectives include the restoration of clean water flows into Florida Bay. NOAA is currently funding approximately 40 percent of the research projects in Florida Bay and the South Florida ecosystem restoration effort. These efforts will result in a positive influence on water quality before it enters the Sanctuary. NOAA leadership has recognized the importance of supporting the efforts of the South Florida Ecosystem Restoration Task Force in order to be successful in the management of the Sanctuary.

The most prominent role for the Florida Keys in the south Florida ecosystem restoration effort has been through the representation of the Sanctuary on the Task Force and the roles of EPA and the State in the Water Quality Protection Program as it is represented on the Task Force. Without the efforts of these agencies on behalf of the FKNMS, the Florida Keys coral reef communities would not be represented on the South Florida Ecosystem Restoration Task Force. Thus, the Sanctuary clearly has a role in influencing the impacts of water quality originating outside its boundary.

Concerns over the demise of Florida Bay have been the topic of debate for at least a decade prior to the designation of the FKNMS. At the first SAC meeting in February 1992, members of the SAC familiar with problems in Florida Bay raised the issue of water quality decline in that area. Commercial fishermen and flats guides shared their observations of decline in Florida Bay water quality. In addition, the Water Quality Protection Program for the Sanctuary recognized that some of the sources of the water quality problems affecting the coral reef were originating upstream of the Florida Keys and Florida Bay. In just over a year, all of the agencies responsible for managing components of the South Florida region had signed an interagency agreement directed at restoring the South Florida ecosystem.

The agencies had agreed that the ecosystem begins in the Kissimmee River basin and includes Lake Okeechobee, the Everglades Agricultural Area, the Everglades, Florida Bay, through the Keys, and all the way to the coral reef tract. This was the first time the scope and dimension of the ecosystem had been defined at this scale. It is with this vision that ecosystem management must be implemented in the Sanctuary. The proper water quality and hydrological and ecological linkages throughout the ecosystem must be re-established in order to reverse declines on the coral reef. Each of the agencies responsible for management of components of the ecosystem must work to improve the quality of water in their segment of the ecosystem, while working with other members of the restoration task force to improve the entire ecosystem functions.

Accountability and Power of NOAA

Comment: Some commentors were concerned about the powers of NOAA in general, and some were particularly concerned about the powers of the Director because decisions affecting user groups would be made by authorities in Washington headquarters, as opposed to locally. Some commentors indicated that NOAA should be held accountable for its management actions.

Response: NOAA notes that under various laws and the management plan itself, the powers of other Federal and State authorities remains intact. Moreover, there are a number of checks and balances whereby NOAA is held accountable for their management actions. The Congress holds NOAA accountable through its review of individual Sanctuary management plans and periodic reviews of the National Marine Sanctuary Program. There are also numerous Federal statutes which ensure the accountability of Federal programs, including the Administrative Procedure Act. For example, with the exception of emergency regulations, all substantive changes to Sanctuary regulations will require prior notice and opportunity for public comment before they become effective. In this Sanctuary, the State of Florida, as a management partner, will continue to be a check on NOAA's authority, including the application of Sanctuary regulations in State waters. The EPA and the State of Florida will continue to have the lead in addressing the Water Quality issues that affect the Sanctuary.

To user groups, perhaps the most important check on NOAA's accountability may be SAC. The SAC is comprised of members representing the various Sanctuary user groups (commercial fishermen, charter boat operators, tourism industry, scientific and educational organizations, and conservation groups, etc.). Consistent with the FKNMSPA, the SAC provides NOAA with advice and recommendations on the management plan and its implementation, including resource protection, research, monitoring, education, outreach and other general policy issues related to Sanctuary management. The SAC is also a forum to enhance communication and cooperation between the public, user groups, the Federal/State and local agencies, and non-governmental entities in furtherance of coordinated, efficient and effective management of the Sanctuary. SAC meetings are open to the public and interested persons are given the opportunity to present oral or written statements to the Council.

Under the NMSA and the FKNMSPA, the Secretary of Commerce is directed to develop a Sanctuary management plan and implement it. Under Departmental Orders, this authority has been delegated to the Director of NOAA's Office of Ocean and Coastal Resource Management. The regulations were drafted accordingly. While the Director has in turn delegated most of the day to day Sanctuary management decisions to local Sanctuary managers with appropriate reservations, the regulations were not changed and will continue to reflect the Departmental Orders. The Director's responsibilities for the FKNMS are commensurate with other sanctuaries.

Designation Document/Appendix K

Comment: Many reviewers expressed concern over the Scope of Regulations contained in the draft Designation Document for the FKNMS (Volume III, Appendix K). The concerns were primarily that the Scope of Regulations was too broad. For example, they were surprised to see that the Scope included airplane flights, dock construction, and a broad range of other activities that seemed outside the authority of the Sanctuary. Many feared that NOAA could easily regulate activities within the Scope of Regulations in the future with little or no public input. Some questioned the need for a designation document as the Sanctuary was designated by statute. Many, including the SAC, urged NOAA to eliminate the Scope of Regulations. However, some reviewers expressed support of the broad Scope of Regulations and urged NOAA to retain what was presented in the draft plan.

Response: The Designation Document is a charter or constitution for the Sanctuary. The Scope of Regulations, which is part of the Designation Document, sets forth the types of activities which may be subject to future regulation. Consistent with the recommendations of the SAC and other commentors, NOAA has reduced the Scope of Regulations to more closely track the final regulations by eliminating certain activities.

NOAA cannot issue regulations for activities listed in the Scope of Regulations unless NOAA complies with the provisions of the Administrative Procedure Act. These procedures require that the public be given notice and the opportunity for comment. The courts are a check against decisions that are arbitrary and capricious, the State must approve regulations that apply to State waters, and Congress maintains continual oversight.

Degradation of Environmental Resources

Comment: NOAA received many comments providing anecdotal information concerning the state of the Florida Keys' marine environment. These comments were personal observations of significant changes in reef species assemblage, visibility of the water, and number of fish. Comments were also received to the effect that even though all people have a right to use the resources of the Keys, people do not use the resources equally and therefore some regulation of behavior is necessary.

Response: The Sanctuary was designated in recognition of the observed declines in the health of the natural marine resources of the Keys. The primary objective of the management plan is protection of natural resources while facilitating private and public use that does not compromise this objective. Thus, Sanctuary management will address such issues as water quality and habitat protection through various strategies and techniques ecosystem-wide in an effort to preserve or restore the resources to a more natural state.

Support for Sanctuary and Management Plan

Comment: NOAA received many comments of support for the Sanctuary, the management plan, and NOAA's history of protecting national marine sanctuary resources.

Response: NOAA thanks all who commented on the Sanctuary, the draft management plan, and proposed regulations regardless of whether in support or in opposition. NOAA has had a long history of facilitating all compatible public and private uses of its

National Marine Sanctuaries, including those off Florida. The Sanctuary will continue to encourage public involvement, interagency cooperation, and continuous management actions to achieve resource protection.

Limit the Sanctuary Boundary to the Reef Tract

Comment: Some reviewers recognized that NOAA has done a good job of managing the coral reefs within the Key Largo and Looe Key National Marine Sanctuaries but suggested that NOAA should only focus its management on the coral reef tract.

Response: The FKNMSPA directed the Federal Government and the State of Florida to jointly develop and implement a comprehensive program to reduce pollution in the waters offshore the Florida Keys to protect and restore water quality, coral reefs, and other living marine resources of the Florida Keys' environment. The Act set forth the boundary as well as the scale of protection necessary to effectively manage natural and cultural resources in a holistic manner. Thus, NOAA strongly disagrees that it should just focus its management on the coral reef tract. In order to be successful, Sanctuary managers must be able to address impacts that occur across the range of habitats that comprise the coral reef community in an ecosystem-based management approach.

Allowed Activities

Comment: NOAA received comments requesting that the management plan include a list of allowed activities, not only prohibitions. The SAC discussed a bill of rights and ultimately recommended that there be a list of activities that would be allowed in the Sanctuary.

Response: In response to these comments, NOAA has modified the regulations at § 922.42 to state that ''all activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated. * * *.'' The change is not intended to provide a legal defense for actions against those who violate Sanctuary regulations, but rather to clarify that such activities are allowed to be conducted in the Sanctuary at present and will be allowed in the future, subject to appropriate regulation. There are also specific exemptions to certain prohibited activities to avoid or minimize application to fishermen and other small entities.

Property Rights and Land-Use

Comment: Many comments were received questioning what authority the Sanctuary will have over land use and property rights.

Response: The regulations were specifically modified to exempt Monroe County land use permits. However, in general there have been no conflicts over property rights because Sanctuary regulations are directed at activities in the marine environment. They may apply to activities that directly threaten or impact marine resources within the Sanctuary, which are those lying below mean-high tide. Sanctuary regulations do not take away rights of property owners or affect activities that do not adversely affect Sanctuary resources.

Special-Use Permits

Comment: Some commented that the section on Special-use Permits needs to be more specific.

Response: This regulatory section reflects the provisions of section 310 of the NMSA regarding Special-use Permits. The National Marine Sanctuary Program has had the authority to issue Special-use Permits since 1988, but has only issued few such permits to date. While the NMSA and its legislative history indicates that section 310 is self-implementing and does not require implementing regulations, NOAA has considered the comments and determined that additional information and public input would be appropriate before the development of more regulations with more specificity than is presently in section 310. To the extent more specificity is needed, it should be done in guidelines for the National Marine Sanctuary Program rather than for this particular Sanctuary. In the interim, the Program will continue to work with individual applicants and the public on Special-use Permits.

Coordination With Other Agencies/ Conflict Resolution

Comment: Some commentors expressed the need for coordination between agencies and a mechanism to resolve conflicts between agencies and the public. Others suggested a mechanism be established that provides an administrative appeals process consistent with the Administrative Procedure Act.

Response: NOAA is establishing an Interagency Group to assist in coordinating the implementation of the final management plan for the FKNMS. Additionally, Appendix J contains a Co-trustees Agreement that is accompanied by a series of draft protocols and memoranda of agreements that will serve to outline the way the agencies will conduct the management of the Sanctuary.

The administrative appeal process for Sanctuary management decisions is set forth at § 922.50. Agency decisions, including any amendments to Sanctuary regulations, must be done in accordance with the procedures and requirements of the Administrative Procedure Act.

Monroe County and/or the State Should Manage the Sanctuary

Comment: Some commentors suggested that the State of Florida or Monroe County be charged with developing a management plan and managing the resources of the Florida Keys.

Response: Under the FKNMSPA and the NMSA, NOAA is required to develop and implement a Sanctuary management plan. However, the Sanctuary planning process has included the State and county as partners in the development of the comprehensive management plan. The continuous management process, as described in Volume I of the FMP/EIS, includes Federal, State and county agency managers in the continuous management of the Sanctuary. This will help NOAA assure the integration of management programs between the various agencies in a comprehensive manner.

Socio-Economic Impacts

Comment: Some reviewers commented that NOAA did not provide a thorough socio-economic analysis of its actions on commercial or recreational fishing. NOAA also received comments that the Sanctuary will negatively impact the economy of the Keys, as well as comments that the Sanctuary is the only hope to sustain the Keys' tourist economy which is heavily dependent on the presence of a healthy marine environment.

Response: NOAA prepared a socio-economic assessment for the Draft Management Plan and Environmental Impact Statement in compliance with the NMSA and National Environmental Policy Act (NEPA). In response to comments, NOAA has provided a more detailed explanation of the careful balancing of environmental and socio-economic impacts in developing the Preferred Alternative/Management Plan section of the Volume I. A more thorough assessment of the socio-economic impacts on various user groups from management alternatives is found in Volume III, Appendix M.

In an effort to maximize resource protection and minimize adverse impacts on users, NOAA considered socio-economic impacts in developing the draft management plan. Based on the public comments and reports

supplied by the fishing industry, NOAA has further detailed this analysis in the final environmental impact statement and modified the final management plan accordingly.

Personal Watercraft

Comment: NOAA received many comments from the public reminding NOAA that personal watercraft owners and users act responsibly and requesting that personal watercraft not be singled out and treated differently from other vessels. NOAA also received comments noting frequent environmental nuisance and safety issues associated with the operation of personal watercraft. These included: reckless operating behavior, harassment of endangered and other species, harassment of other boaters (including disruption of fishing on flats), and noisy operation in canals or adjacent to residential shorelines. These commentors requested limiting, restricting or banning the use of personal watercraft within the Sanctuary.

The SAC recommended that NOAA work with the industry, the SAC, and the public to establish zones for the voluntary use of personal watercraft in specified areas within one year after issuance of the final management plan. The SAC also recommended that if these zones were not voluntarily established within one year, then NOAA should ban the use of personal watercraft throughout the Sanctuary. In addition, the SAC recommended adding to the regulations a prohibition against reckless operation of vessels. The SAC also recommended that the proposed vessel operation regulation (proposed § 929.5(a)(5)(iv)) be modified to restrict vessels from operating at speeds greater than idle speed only/no-wake in designated idle speed only/no-wake zones, and modify the minimum distance requirements in the regulation.

The personal watercraft industry commented that there was no basis to impose severe regulatory restrictions on the use of personal watercraft, but generally supported the strategy of restricting all motorized vessel use in certain buffer zones and establishing idle speed only/no wake areas. The industry also strongly endorsed the strategy of working with NOAA to educate recreational personal watercraft users in the Sanctuary, and develop industry standards for rental operations in the Sanctuary.

The State of Florida questioned whether distance restrictions delineated in the buffer zones could be adequately enforced.

Response: NOAA has developed a multi-pronged approach to address the public's concern about the use of personal watercraft. NOAA has accepted the SAC's recommendation to add a new section to the final regulations (§ 922.163(a)(v)) which prohibits reckless operation of all watercraft. Additionally, proposed § 922.163 (a)(5)(iii) has been modified to prohibit operating a vessel at greater than idle speed only/no wake (except in marked channels) in designated areas within 100 yards from residential shorelines, stationary vessels and navigational aids marking emerging or shallow reefs. NOAA has also incorporated into its regulations the authority to enforce all idle-speed only/no wake areas throughout the Sanctuary. NOAA will use the existing county and State process for designating these areas. NOAA accepts that the industry is seriously committed to self regulation and will develop successful educational efforts geared toward changing user behavior. The final component of NOAA's approach is a modification of the SAC's recommendation. NOAA will begin establishing broad zones with restrictions on the use of personal watercraft (consistent with the SAC recommendation) in one year only if these initial efforts are not successful at significantly reducing or eliminating the nuisance and safety problems, as well as the threats to the natural resources.

Channel/Reef Marking Action Plan

Boater Education

Comment: Channel/reef marking must be supplemented with boater education in order to limit impacts on shallow water marine resources. The channel/reef marking action plan does not contain strategies that address education.

Response: NOAA agrees that boater education is a critical component for protection of shallow water resources of the Sanctuary. The education and outreach strategies directed at boating impacts are contained in other management action plans.

Marking Shallow Water Habitats and Vessel Routes

Comment: The action plan does not address marking coral reefs and other shallow water habitats outside of channels, to warn boaters of sensitive areas. The action plan should be revised to include navigational aides that warn boaters and should be renamed ''Navigational Marking Action Plan'' or the ''Channel/Reef Marking Action Plan''.

Response: NOAA agrees that providing navigational aides that warn boaters of sensitive, shallow water habitats is a necessary component of resource protection. NOAA will work closely with the USCG, the State, and the county to provide appropriate internationally recognized navigational aides to mark sensitive, shallow water habitats such as coral reefs. NOAA also recognizes that providing a logical and clearly marked system of channels in high traffic areas is the preferred method of routing vessel activity away from sensitive habitats. In addition, strategic placement of navigational aides used to warn boaters is necessary in many areas and will be pursued. NOAA has revised the action plan and has renamed the plan as the ''Channel/Reef Marking Action Plan.''

Channel Marking Criteria

Comment: The criteria for determining the priorities for marking channels as well as the locations of high priority channels should be included in the plan. The SAC recommended draft channel marking criteria and a list of high priority channels to be marked.

Response: The criteria for channel marking prioritization as recommended by the SAC has been included in the final action plan. However, including a list of high priority channels recommended by the SAC is premature. Instead, the action plan establishes a process for identifying and prioritizing channels to be marked.

The list of proposed channels recommended by the SAC has not been subject to review and prioritization by those criteria. All areas to be marked should be reviewed through the process set forth in the action plan. Thus, the list of priority channels has not been included in the final action plan, but the criteria and process have been included.

NOAA's Role

Comment: The draft action plan does not clearly define NOAA's role in the channel/reef marking program.

Response: The final plan (Strategy B.4, Activity 8, Implementation) more clearly defines NOAA's role in this effort.

Effectiveness Assessment

Comment: Expand the activity associated with the assessment of channel marking effectiveness to include on-site monitoring and research, in addition to aerial photography.

Response: NOAA agrees and the final action plan (Strategy B.4, Activity 6) reflects this comment. Further, Strategy B.4, Activity 8 has been expanded to address removal of markers that are found to have a detrimental effect.

Update Status

Comment: Many of the activities originally described in the action plan have already been completed or their status needs to be updated.

Response: NOAA agrees. The final action plan reflects the current status of activities.

Four Point Program

Comment: Some reviewers support the Boating Impact Working Group's (BIWG) ''Four Point Program.'' The final management plan needs to be expanded to include establishment of no access and restricted access areas, as recommended by the BIWG.

Response: NOAA agrees that the establishment of no access and restricted access areas is an effective method to reduce shallow water impacts. The plan recognizes this and adopts a series of restricted access areas associated with the Wildlife Management Areas (see Regulatory Action Plan, Appendix III to Subpart P—Wildlife Management Areas, and the Zoning Action Plan maps). Most of these areas are part of or are adjacent to DOI National Wildlife Refuges, however seven non-associated areas were added. These are the only areas that NOAA received specific input on during the planning process. NOAA will monitor the effectiveness of designating these areas as Wildlife Management Areas and imposing access restrictions and will consider adding other areas in future revisions of the plan.

Removal of Problematic Aides to Navigation

Comment: There is no mechanism in the plan to remove channel markers that prove to be problematic because they increase vessel impacts to shallow water areas.

Response: Strategy B.4, Activity 6 provides a mechanism to evaluate the effectiveness of channel markers for the protection of marine resources. Strategy B.4, Activity 8 has been expanded to address removal of markers that are found to have a detrimental effect on marine resources.

Channel/Reef Marking Is Expensive

Comment: The proposed channel/reef marking program is too costly at a time when the government is trying to economize.

Response: The primary funding source identified in the plan for channel/reef marking is the Boating Improvement Fund (BIF) and the current aides to navigation program administered by the U.S. Coast Guard. The BIF is an existing funding source that is administered by Monroe County. The money is derived from a portion of State vessel registration fees which are returned to the county where they were generated. This money must be used for projects designed to enhance boating, and is specifically targeted at channel/reef marking, launching facilities and similar projects. Currently, Monroe County receives approximately $125,000 annually from this source. Therefore, this money is available for channel/reef marking already, and the management plan is designed to provide a coordinated effort at prioritizing expenditures. Additionally, the U.S. Coast Guard continues to fund the installation and maintenance of many of the aides to navigation used in the Sanctuary. These funds do not come directly from NOAA.

Stay in the Channels Only

Comment: There are fears that once the channels are marked, boaters will be prohibited from going outside of the channels. Further, in the interim, boaters-especially fishermen-should not be penalized for prop dredging until the markers are installed.

Response: The regulations do not prohibit vessels from navigating outside marked channels regardless of depth. What the regulations do prohibit is the destruction of seagrass and other shallow marine resources as a result of imprudent operation of vessels.

Deep Water Access

Comment: Several reviewers requested that a definition of deep water access be added to the regulations and questioned how the Sanctuary will address areas that are accessible only at certain tides.

Response: The channel/reef marking action plan assumes a 4 ft mean low water as a threshold criteria for deep water access. This is consistent with current State and local regulation and criteria. Channel/reef marking will not be a substitute for local knowledge or normal prudent navigation skills.

Arrows on Channel/Reef Markers

Comment: Navigational aids should be clearly understandable to guide boaters through channels and warn them of shallow areas. It was also suggested that channel/reef markers include arrows indicating the direction of the channel.

Response: It is necessary that standardized channel marking for the Sanctuary conform to the international rules of the road as required by the US Coast Guard and the State of Florida. The Coast Guard discourages the use of arrows on posts, but will allow gated (double) markers to mark particularly sensitive areas.

Education and Outreach Action Plan

Education v. Outreach

Comment: A number of reviewers expressed concern that the draft management plan addresses education at the expense of outreach noting that, while compatible, they are distinct and address different needs and audiences.

Response: NOAA agrees, and the final management plan clearly reflects both responsibilities. The Education Action Plan has been renamed the Education and Outreach Action Plan.

Education Supports Resource Protection

Comment: A number of reviewers recommended the inclusion of a new education goal to reflect the intent of the Education Program in achieving resource protection and management goals of the Sanctuary. The National Park Service made several suggestions on how the plan should be modified to reflect that the educational strategies include cultural as well as natural resources. Additionally, some reviewers said that an adequate education program could alleviate the need for additional regulations.

Response: The final management plan states that the intent of the program is to educate the public about Sanctuary resources (natural and cultural), thus complementing the protection and management goals of the plan. Education and regulation are complimentary management tools in resource protection. It is hoped that increased education will result in voluntary compliance with regulations through increased understanding.

Spanish-Speaking Staff

Comment: A number of reviewers recommended the hiring of a Spanish-speaking staff member for the Education program.

Response: In order to address the multi-lingual nature of many Education and Outreach activities, the contracting or hiring of a Spanish-speaking education staff member or intern will be given priority consideration.

Funding for Education and Outreach

Comment: Reviewers recommended increased funding of the Education Action Plan. Additionally, the pursuit of alternative sources of funding was also recommended.

Response: Education is a primary management tool in resource protection and will be considered in budget allocations. The management plan addresses alternative funding.

Priorities

Comment: Many reviewers expressed concern that the education strategies ranged from an overall priority level of three to five and had an anticipated low level of action in year one.

Response: Some of these activities are already underway in the Sanctuary's Education and Outreach program. NOAA agrees that the priority level for education and outreach should be elevated. As a result, the document has been revised and updated.

Enforcement Action Plan

Interpretive Enforcement/Connection Between Enforcement & Education

Comment: Many reviewers did not understand the concept of interpretive enforcement. Others felt that law enforcement officers should supplement the Sanctuary's education program. Others commented that NOAA should educate the resource users rather than using enforcement officers to catch violators who are making mistakes.

Response: The term ''interpretive enforcement'' refers to the merging of education functions with the enforcement officers' duties. NOAA strongly agrees that an effective enforcement program includes not only enforcement of violations, but education of Sanctuary users to achieve voluntary compliance with regulations. Although Sanctuary officers have full authority to enforce regulations, education is a primary tool of enforcement as outlined in the Enforcement Action Plan and the Education and Outreach Action Plan. The Sanctuary will undertake an outreach effort to make users aware of the regulations. For example, law enforcement officers distribute Sanctuary pamphlets in their contact with boaters during water patrols, and use this education opportunity to gain voluntary compliance.

Standardization

Comment: Wording in the draft management plan is ambiguous, therefore it leaves interpretation to the enforcement officers. The comment also charged that information received from officers is not consistent from officer to officer.

Response: Through coordination and training of law enforcement officers, standardized enforcement procedures, including interpretive enforcement, will be achieved. This is outlined in the Enforcement Action Plan.

Coordination With Existing Agencies

Comment: There are 24 agencies currently responsible for protecting the natural and cultural resources of the Florida Keys. What is NOAA going to do to make them do their jobs?

Response: There are numerous agencies with responsibilities and somewhat limited ability for full enforcement of all rules everywhere. NOAA will seek to coordinate their activities, thus achieving more effective enforcement of all regulations. To this end, the FKNMS has developed an agreement with other enforcement agencies such as the US Coast Guard, the State of Florida, the US Fish and Wildlife Service, and the National Park Service to maximize and coordinate existing assets concerning Sanctuary enforcement. Since the Sanctuary includes both State and Federal waters, close coordination between the State and NOAA is essential.

Funding/Additional Enforcement

Comment: The management plan states that an additional 30 law enforcement officers will be needed for the Sanctuary. Many reviewers agreed that additional officers are needed to enforce laws, but questions were raised: Where will the funding come from for these officers? What is the timing for hiring additional officers?

Response: NOAA agrees that enforcement is important for successful comprehensive resource protection and management. In balance with other Sanctuary management needs, the expansion of the law enforcement program will be phased in as funding allows. Funding is critical but limited and must be balanced with other management goals such as education and outreach, research and monitoring. The hiring of an additional 30 law enforcement officers is a goal of the enforcement program. NOAA will work actively with the State to identify alternative funding sources for hiring additional law enforcement officers.

Mooring Buoy Action Plan

Use of Volunteers

Comment: Encourage the utilization of volunteer assistance in mooring buoy management and reference the interaction with the Volunteer Action Plan.

Response: The benefit of using volunteers in various stages of mooring buoy management is recognized, and reference to utilizing volunteers and volunteer programs was included in the draft. However, NOAA agrees that more emphasis should be placed upon the use of volunteers and the plan has been revised to reflect this (Strategy B15, Activity 1, Implementation; Activity 8, Implementation). In the area of mooring buoy maintenance, volunteers will be used at the direction of those responsible under contract for the maintenance program.

Participation by the SAC

Comment: The SAC should be formally involved with all aspects of mooring buoy planning and management.

Response: NOAA agrees, and the Final Management Plan reflects this (Strategy B15, Activity 2, Activity 3, Activity 4, Activity 6, Activity 9).

Streamline Permitting

Comment: The permitting process to install mooring buoys needs to be streamlined to assure easier ability to accept donated mooring buoys or funding to install mooring buoys.

Response: The purpose of the mooring buoy plan is to identify appropriate sites for installation of new mooring buoys within the Sanctuary. Once the plan is finalized, it is NOAA's intent to obtain approval for the installation of all buoys from all applicable agencies.

Carrying Capacity Strategy

Comment: Considerable comment was received on the concept of carrying capacity. Some noted that the implementation of carrying capacity based on mooring buoy placement alone is inappropriate. This is because it is the number of divers on a vessel that is the most important aspect, not the number of vessels. The SAC recommended to remove the Carrying Capacity Strategy (Strategy R.5) from the Mooring Buoy Action Plan. This strategy should only occur in the Research and Monitoring Action Plan. Others suggested to separate the issue of carrying capacity from mooring buoys by developing a carrying capacity action plan. However, comment was also received that carrying capacity must be established for high use coral reef areas and that the use of mooring buoys is one method to implement carrying capacity.

Response: NOAA agrees that the issue of carrying capacity is much larger and more complex than can be addressed in the Mooring Buoy Action Plan alone. Mooring buoys are only one possible tool that could be used in the implementation of carrying capacity. At this time, there are no definitive studies available that could aid in establishing carrying capacity limits. The Research and Monitoring Action Plan will provide the opportunity for studying this topic. Therefore, it is necessary to undertake additional research before such limits can be considered. NOAA has revised the management plan to remove the carrying capacity strategy from the Mooring Buoy Action Plan. It

remains in the Research and Monitoring Action Plan and will be given a high level of priority. It is not advisable to create an entire new action plan for carrying capacity at this time.

No Anchoring in the SPAs

Comment: A large number of comments were received that recommended a no-anchoring policy within Sanctuary Preservation Areas (SPAs) where mooring buoys are present. The SAC recommended that the SPAs become no-anchoring zones, but that this should be phased in as sufficient mooring buoys are placed to accommodate existing uses. They also recommended that this issue be divorced from the Mooring Buoy Action Plan and be inserted into the zoning and regulatory action plans.

Response: NOAA agrees that the SPAs should become no-anchor zones. Before this policy is implemented, there should be a sufficient number of buoys in each SPA to accommodate a reasonable level of demand. The Working Group established in the Mooring Buoy Action Plan (Strategy B.15, Activity 4) will determine the sufficiency of the number of mooring buoys in the SPAs in developing the mooring buoy management plan. In the meantime, the regulations require boaters to use mooring buoys when they are available in SPAs and prohibit anchoring on coral. Thus, anchoring would be allowed on sand.

Support for Mooring Buoy Program

Comment: Numerous comments were received that indicated strong general support for mooring buoys. Some indicated that the buoys should not be just for divers but should consider the needs of fishermen as well.

Response: NOAA feels that the mooring buoy program is one of the most important proactive resource management actions that the Sanctuary has taken. The mooring buoy program will continue to be a major emphasis of the FKNMS. The FKNMS management team will consider mooring buoys for fishing uses in addition to those used primarily by divers.

Installation and Management of Mooring Buoys by Non-Profits

Comment: Several comments were received that stated that the FKNMS should leave the management of mooring buoys in the hands of existing agencies and non-profit organizations. Federal money would be better spent by giving it to non-profits. Some reviewers indicated that NOAA had overestimated the cost of mooring buoy maintenance.

Response: The Mooring Buoy Action Plan calls for encouraging new and continued efforts of non-profits and other organizations, as well as exploring other innovative funding mechanisms for installing and maintaining mooring buoys. The National Marine Sanctuary Program currently maintains approximately two thirds of the mooring buoys in the Florida Keys. It has been found to be a cost effective program utilizing local contractors for maintenance service. The costs in the action plan were somewhat high, as they were originally based on the maximum deployment of mooring buoys throughout the Sanctuary, not on current conditions. Cost was also based on a five year planning time frame, which was not made clear in the plan. The action plan has been revised to consider a more modest deployment of mooring buoys and has been clarified in regard to annual maintenance costs.

Raise the Priority of Mooring Buoy Program in Management Plan

Comment: Raise the overall Sanctuary priority level for mooring buoy activities from 3 to 2, in order to emphasize its importance.

Response: NOAA agrees that mooring buoy management is a high priority and the final management plan reflects the change from a medium to high level of priority.

Limit the Size of Vessels Using Mooring Buoys

Comment: Some reviewers recommended that NOAA limit the size of vessels using mooring buoys.

Response: Considering that the size of the anchoring apparatus increases with the size of the vessel, NOAA is hesitant to limit the size of vessels that use mooring buoys because this action may force large vessels to anchor thus increasing the potential impact to the coral reefs. However, the mooring buoy action plan contains activities that address the management of large vessel use on mooring buoys in high use or sensitive areas and NOAA is committed to improving mooring buoy technology to accommodate large vessel use. Additionally, NOAA has included a restriction on damaging mooring buoys in the regulations which places the burden on large vessel operators to assure that their use of mooring buoys is conducted in a manner so as not to damage the mooring buoy or hardware. This includes adding additional tag line to the mooring buoy in rough seas.

Regulatory Action Plan/Regulations

Definitions

Comment: NOAA received comments suggesting that several definitions be added to the list of definitions in the Sanctuary regulations.

Response: NOAA has added definitions, including those for *coral,* coral area, coral reefs, hardbottom, and *residential shorelines,* to the regulations.

Anchoring

Comment: NOAA has received several comments on the issue of anchoring within the Sanctuary. Comments ranged from requests for a Sanctuary-wide prohibition on anchoring on coral to those suggesting a prohibition only on the shallow reefs. Commentors stated that the bottom is often not visible in 50 feet of water, and therefore the anchoring restriction was impractical.

Response: NOAA has revised proposed § 922.163(a)(5)(ii) to prohibit having a vessel anchored on live coral other than hardbottom in depths less than 40 feet when visibility is such that the seabed can be seen. This restriction does not apply to anchoring on hardbottom. This regulation is necessary to address the impact of anchoring on coral.

Vessel Operation

Comment: Operation of vessels, particularly personal watercraft (jet-skis) generated considerable comment during the review process. Many reviewers were concerned about the operation of personal watercraft in such a way as to create a nuisance, or in a manner that disturbed wildlife or affected the health of Sanctuary resources. One reviewer said, ''jet skis take the magic out of the Keys.'' On the other hand, there were numerous comments that the operation of personal watercraft should not be singled out from the operation of other vessels. Others commented about the adverse impacts from all vessels on shallow water habitats and wildlife in the Sanctuary. Careless operation of all vessels was also an issue of concern by the public.

NOAA received considerable comment from the public, the SAC, and the State of Florida on the proposed regulations for operation of vessels at greater than idle speed only/no wake near islands, residential shorelines, stationary vessels, and emergent reefs. Considerable comment was received on the proposed regulation that restricted vessel operation at a speed greater than idle speed only or no wake within 200 yards of mangrove fringed islands, residential areas, flats, stationary vessels, and other features.

Response: NOAA recognizes the adverse impact on Sanctuary resources and the user conflicts that can occur from the operation of all vessels. The threat to Sanctuary resources is universal to the operation of all vessels, not just any one type. However, the size, maneuverability, and shallow draft of personal watercraft results in operator behavior that makes them a greater source of user conflict and threatens Sanctuary resources more than any other vessel, particularly in shallow water habitat. Approximately 40 percent of the boating accidents in Monroe County in 1995 resulted from personal watercraft. This statistic indicates that the potential for careless operation of personal watercraft is very high. Most of the negative public comments about personal watercraft were behavior related examples.

The final regulations do not single out personal watercraft. Rather, the regulations apply to operation of all vessels to comprehensively address the potential resource impact, user conflicts and safety problems within the Sanctuary. The final regulations specify that, except in marked channels, vessels are prohibited from operating above idle speed or creating a wake in areas marked idle speed only/no wake, and within 100 yards of residential shorelines, stationary vessels, and marked emergent reefs, and 100 feet from a divers down flag. As regards the 100 foot distance requirement from diver down flags, NOAA modified this from the proposed 100 yard requirement to be consistent with State regulations.

Personal Watercraft Rentals

Comment: Many reviewers commented on the use of rented personal watercraft. Some in support, some in opposition, and some in support with appropriate restrictions. The SAC recommended that NOAA work with the personal watercraft (PWC) industry to begin a process to identify whether there is a need to establish restrictive zones. Comments from the personal watercraft industry representatives indicate interest in self regulation.

Response: NOAA plans to work with the PWC industry, the SAC and the public to determine regulatory and non-regulatory steps to address the issue, including the potential need and location of PWC rental use-zones.

Emergency Closures

Comment: Some reviewers were concerned about the ability of the Director or his designee to close areas or impose limited access provisions for unspecified periods of time.

Response: Section 922.165, the authority to impose emergency regulations, including area closures or access restrictions, has been revised to limit the term of an emergency regulation to 60 days, with the option of one 60-day renewal. In addition, under the Co-Trustee Agreement, the Governor and Cabinet will be provided advance notice of all emergency regulations. The Governor has the authority to reopen an area in State waters by certifying his or her objection to NOAA. Similarly, the Florida Marine Fisheries Commission will be provided advance notice of closure of areas to fishing activities. Any closure beyond 120 days would require providing the public the opportunity for notice and comment as required by the Administrative Procedure Act. Such area closures will be limited to the minimum amount of area necessary so as to achieve the purpose of the closure and avoid or minimize adverse impacts to Sanctuary users.

Civil Penalties

Comment: Some reviewers expressed an interest in having a penalty schedule published in the final management plan showing a scale of penalties for various infractions. Many reviewers have expressed concern about the discretion of enforcement officers in handling violations. Reviewers feared that NOAA could abuse it's authority and charge the maximum $100,000 civil penalty per day for a minor infraction. Some commented that civil penalties as outlined in draft regulations implied an ''all or nothing'' approach to enforcement and that the potential economic consequences if boaters are scared away from using the Sanctuary because of excessive regulations should be noted. Some commented that the penalty structure must be expanded to include degrees of violations, both intentional and unintentional. Some commented that the threat of enforcement for the intentional vandal should be significant while the inadvertent accident of a well-meaning citizen should not be the grounds for a severe penalty. Some asked who would develop the penalty structure and what public review process the penalty structure would go through?

Response: Civil monetary penalties are developed for Sanctuary violations by NOAA's Office of the Assistant General Counsel for Enforcement and Litigation, with input from the Office of Law Enforcement, the Sanctuary program, the Regional Administrator for the Southeast Region, and the U.S. Coast Guard. The schedule will include enforcement actions that may be taken against violators, which may include verbal warnings, written warnings, civil monetary penalties, permit sanctions, and/or seizures of property. Many factors are taken into account in determining an appropriate penalty for a particular violation, including prior violations, the severity of the offense, and other aggravating or mitigating circumstances. The schedules will be available to the public before the regulations become effective and are enforced.

Sanctuary Certification/Authorization of Permits/Leases/Licenses

Comment: Some reviewers, including the SAC, expressed concern over the application of terms and conditions to leases, permits, licenses particularly those in existence prior to the designation of the Sanctuary. The public's concern was that the regulations on Sanctuary certification of pre-existing permits (proposed § 929.14) and Sanctuary authorization of other agency permits or authorizations after the effective date of the Sanctuary (proposed § 929.15) were too broad and appeared to give the Director the power to change existing authorizations. Commentors indicated that such power should not be handed over to a non-elected official without the right of appeal on the part of the individual holding the permit, lease, license or authorization.

Response: The State, county and other Federal agencies will continue to exercise their authority to issue permits. The Sanctuary will not pre-empt their authority to issue permits. In order to avoid duplicative permits and paperwork requirement, NOAA will seek to address Sanctuary concerns through those existing authorities. However, those authorities cannot authorize something that the Sanctuary prohibits. This regulatory authority is consistent with most sanctuaries and is based on provisions of the NMSA. Although the NMSA authorizes NOAA to regulate existing permits, including adding conditions, such regulations may not terminate any pre-existing permits, licenses or leases. Furthermore, §§ 922.167(i) and 922.49(h) provide that the Director's conditions or other decisions may be appealed. The appeal procedures are set forth in § 922.50. In addition, there are other checks and balances in place that prevent abuse of discretion relating to permits. NOAA and the State have developed a draft interagency agreement which identifies which activities will be subject to certification and authorization, and how the review process will be coordinated.

Sanctuary Permits—Time Limitations

Comment: Some reviewers requested that NOAA place a time limit on itself in which to respond to a permit request. The SAC suggested a 60-day time limit.

Response: Sanctuary concerns will be addressed for most activities and projects in other Federal permits and, if none exist, in State permits. Sanctuary permits are issued only if Sanctuary concerns cannot be addressed in the existing Federal/State permit regimes. NOAA has not imposed any time constraint for responding to permit requests. NOAA agrees that 60 days is a reasonable time in which to respond to most permit applications. NOAA normally responds within 3 weeks to a month after receipt of a complete application for most permits. However, a 60-day time frame may not be appropriate for large or complex projects.

Sanctuary Permit Reporting Procedures

Comment: Some reviewers expressed concern over the reporting requirements for permits.

Response: NOAA has not changed the permit reporting requirements. No reports are required more often than monthly. For permits issued for one year, the reports required are a ''quick look'' report and final report. Longer permits require a ''quick look'', annual, and final reports. Reports assist the Sanctuary in assessing the progress and impacts of a permitted activity and provide information useful to Sanctuary management.

Fee Schedule/Special Use Permits

Comment: Some reviewers suggested NOAA develop a fee schedule, based on fair market value, for the issuance of Special-use Permits.

Response: NOAA has not included a fee schedule in the final plan. The need for a Special-use Permit fee schedule is programmatic, not Sanctuary specific, and the details and specifics of Special-use Permits have not been completed by the Sanctuary and Reserves Division of NOAA. Further, the small number of Special-use Permits issued to date has not warranted the administrative review and development of such a schedule. Special-use permits will continue to be considered on a case-by-case basis.

Effectiveness of Enforcement of Regulations

Comment: There was comment expressing concern about the effectiveness of enforcing the Sanctuary regulations.

Response: NOAA feels that effective and efficient resource protection requires coordination with existing regulations. As a result, the Sanctuary is developing an agreement with other enforcement agencies such as the US Coast Guard, State of Florida, US Fish and Wildlife Service, and the National Park Service to maximize and coordinate existing assets concerning Sanctuary enforcement. Since the Sanctuary includes both State and Federal waters, close coordination between the State and NOAA is essential.

Florida Clean Vessel Act/Vessel Discharge

Comment: The State of Florida and other reviewers recommended that NOAA establish regulations throughout Federal waters that meet the requirements of the Florida Clean Vessel Act.

Response: NOAA has not incorporated the provisions of the Florida Clean Vessel Act in the final regulations. This act does, however, apply to the 65 percent of the Sanctuary in State waters. Further, the final regulations prohibit all discharging and depositing of any material or other matter except cooling water or engine exhaust in Ecological Reserves or Sanctuary Preservation Areas. Thus, discharge from marine sanitation devices in these areas is prohibited. This will protect the shallow coral reefs from discharge of nutrients. In addition, NOAA will work with the State of Florida and the Water Quality Steering Committee concerning incorporation of provisions similar to the Florida Clean Vessel Act throughout the Sanctuary.

Transiting No-Take Zones

Comment: Some fishermen expressed concern over the inability to transit no take zones with their equipment on board and their catch taken from outside the zones.

Response: The final regulations allow transiting an ER or SPA with catch taken outside the ER or SPA, provided it is stowed prior to entering and during transmit. The final regulations also allow transiting with otherwise prohibited gear provided it is unbaited and stowed in a cabin, locker, rod holder or similar storage area, or is securely covered and lashed to a deck or bulkhead unbaited, prior to entering and transiting the area.

Live Rock Harvest, Shell and Tropical Fish Collecting

Comment: Many reviewers commented on the collection and harvest of live marine organisms and mollusc shells.

Response: Live rock harvesting is currently prohibited under State and Federal fisheries law. The prohibition has been added to Sanctuary regulations to protect these Sanctuary resources should the restrictions under other laws be removed. Shell collecting and tropical fish collecting and other consumptive activities are prohibited in the SPAs and Ecological Reserves. In addition, the Florida Marine Life Rule has been incorporated by reference into the Sanctuary regulations and thereby extended into Federal waters. These regulations will address some concerns of exploitation while minimizing economic impact. The marine life rule is referred to in § 922.163(a)(12) of the Sanctuary regulations and is reproduced in Appendix VIII.

Diver Impact

Comment: Some commented that stronger regulations were needed to prohibit coral touching and recommended specific regulations dealing with diver and snorkeler impacts on the coral reefs. Some suggested prohibiting the use of gloves or requiring float coats for snorkelers. There was also a comment that there should be no prohibition against impacts to dead coral.

Response: Section 922.164(d)(iv) of the Sanctuary regulations prohibits divers and snorkelers from touching or standing on living or dead coral formations in the SPAs and ERs. Approximately eighty to eighty-five percent of the year-round diving and snorkeling activity within the Sanctuary takes place in the 18 SPAs and one ER established by the final regulations. This single regulation will address the issue of diver impact on coral reefs without having to develop a series of regulations on gear requirements that accomplishes the same goal. NOAA included ''living or dead'' coral formations with the understanding that some visitors to the Sanctuary do not know the difference between living and dead corals. Additionally, impacts to dead coral formations may disrupt new coral recruits. The removal or injury to corals is also prohibited Sanctuary-wide.

Spearfishing

Comment: Some reviewers expressed concern about spearfishing within the Sanctuary, while others urged NOAA to allow it to continue in a managed manner.

Response: In balancing the public's concern and interest over the issue of spearfishing within the Sanctuary, NOAA has prohibited spearfishing in the SPAs, ERs, Research-only Special-use Areas, and some of the Existing Management Areas. NOAA has addressed the concerns of over-harvest

by this fishing technique in eighty to eighty-five percent of the total area within the Sanctuary dived by recreational divers and snorkelers. However, spearfishing will continue to be allowed and managed under fisheries management regulations in the remainder of the Sanctuary. This balance of concerns on the issue will have positive impacts on the resources.

Military Activities Within the Sanctuary

Comment: Some commented that a prohibition on the use of explosives within the Sanctuary should be extended to the military.

Response: The final regulations provide that all military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. Sections 922.163 and 922.164 do not apply to existing classes of military activities as identified in the final environmental impact statement. New military activities may also be exempted from all or part of these two sections upon consultation with the Director. NOAA has been assured by the Navy that live (explosive) ordinances are not currently used within the Sanctuary. The Patricia Range is the only target site within the Sanctuary and live explosives are not used.

Research & Monitoring Action Plan

Management Should Be Based on Good Science

Comment: Management actions should be based on good science and should not occur until the science is done to back it up.

Response: Management actions should be based on the best available science. However, there is always a degree of uncertainty associated with science and, in some cases, it is imprudent to suspend management actions until the science is completed. A precautionary approach to management of Sanctuary resources should be taken in order to ensure that lack of scientific certainty does not preclude implementation of reasonable management measures. An adaptive management approach will be used in the Sanctuary when necessary.

Studies Are Needed To Determine Sustainability

Comment: Studies are needed to determine the level of human activity sustainable by the resources.

Response: NOAA agrees and has included a carrying capacity strategy in the Research and Monitoring Action Plan. The strategy calls for carrying capacity research to be conducted at several of the SPAs and Research-only Special-use Areas.

Too Much Emphasis on Research and Monitoring

Comment: The draft management plan places too much emphasis on research and monitoring.

Response: Research and monitoring is an essential component of effective resource management. The reason many strategies have a research or monitoring component is to assess the strategies'' effectiveness or feasibility in order to determine whether it needs to be modified, continued, or terminated prior to committing additional resources in the future.

Queen Conch Stocking

Comment: A moratorium on stocking would adversely effect the State's queen conch stocking program.

Response: NOAA has revised Strategy F.3 by eliminating the moratorium on stocking and replacing it with a requirement for permitting of all stocking programs.

Monitoring of Zones

Comment: Research and monitoring of zones needs to be a top priority.

Response: Scientific monitoring to determine the effectiveness of the zones is a top priority for NOAA. In 1993, NOAA began to collect baseline data on reef fish populations in and around the proposed no-take zones in preparation for their implementation. Research in the zones is also a top priority and will begin once the zones are finalized. The Research and Monitoring Action Plan explains how the zones will be used for research and monitoring.

Volunteer Research and Monitoring Programs

Comment: Some reviewers pointed out the need to incorporate volunteer monitoring efforts such as some of those currently underway by groups like Reef Relief, The Nature Conservancy, and R.E.E.F. They also pointed out the importance of using the knowledge of local experts to help better understand the health of Sanctuary resources.

Response: NOAA has incorporated the use of monitoring projects by the public and volunteers in the Research and Monitoring Action Plan. The long-term goals of the Sanctuary include using such monitoring programs as a basis of detecting change in the coral reef environment.

Submerged Cultural Resources Action Plan

Prevent Treasure Hunting & No Permits for Private Profit

Comment: Several reviewers, including the National Park Service, Minerals Management Service, and the Department of the Navy stated that no treasure hunting should be permitted in the Sanctuary and that the proposed Submerged Cultural Resources (SCR) permit system was in conflict with the Federal Archaeological Program and particularly the Abandoned Shipwreck Act (ASA) guidelines. Other reviewers indicated that some commercial treasure salvage should be permitted, but should be strictly regulated to prevent any harm to the natural resources of the Sanctuary.

Response: NOAA agrees that ''treasure hunting'' that is, the search for and recovery of intrinsically valuable artifacts with little, if any, regard for the archaeological context and historical significance of the finds, should not be allowed in the Sanctuary.

However, the Submerged Cultural Resources (SCR) Action Plan does provide for public and private sector recovery of shipwrecks consistent with protecting historical values and the environmental integrity of the shipwrecks and sites. NOAA and the State of Florida have agreed that the SCR plan, consistent with the multiple use mandates of the NMSA and the ASA, should provide for the in situ preservation of highly significant historical Sanctuary resources under strict regulations protecting historical values and the environmental integrity of the shipwrecks and sites and that the recovery of SCRs should only be permitted when it is determined to be in the public's interest and done in an environmentally and archaeologically sound manner.

No recovery permits will be issued in areas where there is coral, seagrass or other significant natural resources. However, private recovery of certain SCRs may be permitted in other areas of the Sanctuary which are relatively devoid of natural resources. In such recovery efforts, the highly significant resources will be required to be preserved in a museum of public access consistent with the standards of the Federal Archaeological Program. Objects of low to moderate historic or archaeological significance may be deaccessioned or transferred for sale or other disposition.

As regards the ASA guidelines, NOAA acknowledges that the accommodation of commercial salvage, that is, the search for and the recovery

of shipwreck artifacts using archaeological recovery techniques and historical documentation to maximize the intrinsic value of the finds, does appear to conflict with certain ASA guidelines suggesting that no commercial salvage be permitted in marine sanctuaries. However, NOAA's position is that the SCR Action Plan is consistent with the ASA guidelines when read as a whole. In other words, there is no commercial salvage permitted in the zoned areas and other areas of significant natural resources. Commercial salvage will be permitted only in areas relatively devoid of significant natural resources. NOAA does not suggest that the FKNMS SCR Action Plan be used as a model for other national marine sanctuaries, or for other Federal/State protected areas or preserve systems. There are several distinguishing reasons for the departure from those ASA Guidelines in the FKNMS: (1) 65 percent of the Sanctuary is in State waters—under the NMSA and the ASA due deference must be given to the State's interests in managing Sanctuary resources, particularly abandoned shipwrecks to which the State has title; (2) treasure hunting and commercial salvage of historic shipwrecks has been a traditional activity in the Keys for decades and is part of the local culture; (3) the NMSA and the ASA are multiple use statutes; (4) the establishment of multiple use areas where commercial salvage can occur as well as not permitting any recovery where there is coral, seagrass or other significant natural resources is analogous to the zoning approach proposed for protecting natural resource habitat areas; (5) the SAC recommended that some commercial salvage be permitted in the Sanctuary; and 6) numerous other public comments recommended that some commercial salvage should be permitted in the Sanctuary.

Consistent with the recommendations of the SAC, the State, and public comments, the SCR Action Plan provides a permit system which will strictly regulate private, for profit, recovery of SCRs, to ensure that it is done in an environmentally and archaeologically sound manner. Private, for profit, recovery will not be allowed unless it is in the public interest and will include public display of the recovered SCRs. Certain SCRs will be required to be maintained in museums and similar institutions of public access while duplicative objects may be deaccessioned and transferred to the permittee for sale or other disposition, but only after there has been a proper recording and reporting of the archaeological information. Under the multiple use mandate of the NMSA and the ASA, some SCRs may be recovered while other more significant SCRs will remain in the Sanctuary for *in situ* preservation and use by present and future generations.

Comment: The National Park Service commented that the Antiquities Act applies in National Marine Sanctuaries and therefore an Antiquities Act permit should be required for the excavation and recovery of SCRs.

Response: NOAA agrees that the Antiquities Act applies in the Sanctuary. However, as the Federal agency that exercises control over Sanctuary resources, NOAA is the appropriate Federal agency to issue permits for the management of Sanctuary resources, including antiquities. Moreover, as the Sanctuary SCR permits will be issued in compliance with the NMSA, the ASA, the NHPA, and the standards and guidelines of the Federal Archaeological Program, an additional permit under the Antiquities Act appears unnecessarily duplicative.

Comment: The Department of the Navy objected to the SCR permits and expressed concern about the Navy's historic shipwrecks in the Sanctuary as well as the potential precedent for other Navy historic shipwrecks outside the Sanctuary.

Response: The permits for private recovery and deaccession/transfer only apply to abandoned vessels. As a trustee for such resources, NOAA will continue to respect the interests of the owners of the vessels and the sovereigns that represent those interests consistent with domestic and international law. Sunken warships and other public vessels entitled to sovereign immunity, regardless of location, remain the property of the nation to which it belonged at the time of sinking, unless that nation has taken formal action to abandon it or to transfer title to another party. It is a long-standing Navy policy that it does not abandon its public vessels. Therefore, no permits will be issued for the private recovery of Navy vessels without the express written permission of the Department of the Navy. In considering permits for the private recovery of other vessels entitled to sovereign immunity, NOAA may require the express permission of the appropriate sovereign representatives, or otherwise consider their interests in the vessel and its recovery.

SCR Plan/Permits & Costs to Treasure Salvors Business

Comment: At the scoping meetings, workshops, SAC meetings, other public meetings, and in public comments the treasure salvors have continuously asserted that the FKNMS would put them out of business and commented that the Sanctuary should adopt the State's existing contract system. Others commented that commercial treasure salvage should be permitted, but should be strictly regulated to prevent harm to natural resources from various commercial treasure salvage methodologies, including ''mail-boxing'' (propeller dredging device).

Response: The Florida contract system and the division ratio (80 percent salvor to 20 percent State) was considered as an alternative, but was not preferred because it is inconsistent with the Federal Archaeological Program and with the ASA Guidelines. Prohibiting commercial salvage throughout the Sanctuary was also considered and rejected for reasons indicated in the response to the comments above. The SCR Action Plan is the result of a careful balancing of resource protection and reasonable accommodation for commercial salvage in certain areas for certain SCRs. If the cargo from a wreck is of little or no historical or archaeological significance and duplicative, then nearly all of the recovered objects will likely be transferred to the permittee. On the other hand, if the artifacts are of high historical significance, then the permittee will have possession of the artifacts and may seek return on the investment through other means. However, in this instance there would be no transfer of ownership of a public resource to a private party unless and until it is determined that the resource is of little or no historical or archaeological value. In developing the SCR Action Plan, NOAA considered the threats to natural and historical resources and sought to develop strict regulations to ensure that recovery will be environmentally and archaeologically sound, while at the same time, taking into account the socio-economic considerations of the commercial salvors and others. In response to comments, changes were made to the proposed regulations and draft management plan in an effort to make the permit management system more pragmatic from the perspective of the commercial salvors without compromising the primary objectives of protecting significant natural and historic Sanctuary resources. Between the draft and the final, NOAA issued

several permits to commercial salvors with pre-existing admiralty rights. While the permit conditions may be more rigorous than the requirements of the Admiralty Court or the State contract system, and thus may involve additional costs, those permittees continue to work their sites.

Comment: The Historic Shipwreck Salvage Policy Council (HSSPC) (treasure salvors group) and other treasure salvors also raised specific concerns about the economic burden to permittees in the SCR Action Plan such as requiring performance bonds, general liability insurance, permanent public display of certain SCRs, professional nautical conservators and supervision by professional archaeologists.

Response: Pursuant to consultation with the State of Florida, NOAA has deleted the requirement for a performance bond for all applicants. As the treasure salvors noted, the regulations elsewhere require all permittees to demonstrate their financial ability to carry out proposed projects and activities requiring permits. NOAA agrees that the underlying purpose of requiring a performance bond (to ensure that there are ample funds to finish research-recovery work once initiated) appears to be covered by the other regulations and that by removing the regulatory requirement for a performance bond, there will be more flexibility in the permit system. While the removal of the regulatory requirement should reduce the costs for meeting the permit criteria for most applicants, requiring such a performance bond may still be reasonable and appropriate in certain cases where applicants historically have not finished projects or have difficulty demonstrating their financial ability to complete a proposed project.

General liability insurance is required by Section 310 of the NMSA. However, NOAA has modified the regulatory provision implementing that requirement to clarify that other security instruments may be utilized in lieu of an insurance policy. In addition, NOAA has modified the regulatory language to clarify that the scope of coverage required is for potential claims for destruction, loss of or injury to Sanctuary resources arising out of permitted activities and to clarify that the amount of insurance or security should be equivalent to the estimated value of the Sanctuary resources in the vicinity of the permitted area and activities.

With regard to the requirement that SCRs be publicly displayed, NOAA did not intend to require that all SCRs be publicly displayed for all time. Instead, it was expected that this would be addressed in the curation agreements and that standard museum practices would be followed, consistent with the FAP. The regulations have therefore been modified to indicate that public access and ''periodic'' public display must be provided.

With regard to the requirement that a professional archaeologist be in charge of the archaeological research and recovery, that requirement has not been changed or modified. Recovery of historical resources inherently involves the destruction of contextual and other important archaeological information. The only way that such information is preserved is through scientific recording of the recovery efforts consistent with standard archaeological principles. It is therefore imperative that a professional archaeologist supervise the recovery operations. That is not to say that, as supervisor, the archaeologist needs to be on site all the time. However, the archaeologist needs to oversee the operations. The public's interest in the preservation of this archaeological information justifies the additional costs to the permittee. In addition, the administrative record indicates that many commercial salvors already employ an archaeologist.

With regard to the requirement of a professional nautical conservator, the regulations have been modified to delete ''professional'' and insert ''authorized'' as suggested in comments in order to provide more flexibility in the permit system and allow for the consideration of field experience. As the professional archaeologist is responsible for supervising the operations, NOAA will give due deference to the supervising archaeologist's selection for nautical conservator in considering its authorization.

Special Use Permits; Fees/Waiver in SCR Context

Comment: The HSSPC suggested adding a third criteria for Special-use Permits, i.e., ''to promote private sector participation when advantageous to the taxpayers'' and shifting the costs for Special-use Permits from the permittee to NOAA and the State. The HSSPC also suggested that the costs for Special-use Permits should be limited to the costs of issuing the permit. Other administrative costs such as monitoring activities should not be included. The fair market value for use of Sanctuary resources also should not be included.

Response: Section 310 of the NMSA provides the authority, and sets forth the two criteria, for issuing Special-use Permits. Section 310 also provides for the assessment of associated fees which are to cover the administrative costs as well as a fair market value return to the public for use of public resources. This portion of the management plan merely describes these statutory provisions and remains consistent with section 310.

With regard to adding the third criterion, promotion of private participation, it is not a section 310 criterion or even a general statutory purpose or policy. However, facilitation of compatible multiple use is a statutory policy and the SCR Action Plan has been modified accordingly.

With regard to the assessment of costs and waiver of fees in implementing Special-use Permit authority, NOAA has the discretionary authority to consider waiver of costs and/or fees on a case by case basis when permitted activities result in a public benefit, whose value can be determined. For example, in the SCR context, the preferred policy is that the SCR be preserved on site. Waiver of fees for the removal of SCRs which are not under threat is unlikely. However, if it is determined that the SCR is being threatened by remaining in the Sanctuary, the research and recovery would appear to be in the public interest and reduction and/or waiver may therefore be considered in the cost and/or fee determination. The extent that private use is furthering resource protection, research, education and similar FKNMS management strategies is given due consideration in determining the amount of costs and fees.

Public Access to SCRs (Land v. Sea)

Comment: The HSSPC suggested that the plan should require SCRs to be managed in a manner that brings SCRs to the largest segment of the populations noting that scuba divers amount to less than 1% of the population. Several others, including the National Park Service, commented that SCRs should be preserved in the Sanctuary but that non-intrusive public access for research, education and recreation should be allowed, and that intrusive public access should be strictly regulated.

Response: The policy preference under the FKNMS SCR Action Plan, consistent with the preservation policy in the Federal Archaeological Program, and the resource protection mandate in the NMSA, is that SCRs be preserved on site in the Sanctuary, unless the SCRs are under threat and removal is required to preserve them. As indicated in the comments above, there has been some accommodation for commercial salvage in certain areas of the Sanctuary and for certain SCRs to facilitate multiple use of the SCRs. However, besides being inconsistent with resource protection,

the suggestion that all or most of the SCRs be removed from the Sanctuary is not consistent with the multiple use mandates of the NMSA and the ASA and has therefore not been incorporated. The ASA and the NMSA are both concerned about public access to SCRs for boaters, divers and others within the Sanctuary. The suggested change in policy appears to primarily benefit one special interest group, the commercial salvors. Access to Sanctuary resources for members of the public unable to enter the Sanctuary itself is accomplished through a variety of education and outreach and research products and mediums, including print, film, and computer informational products. The public access goal does not require physical access to the SCRs, nor does it require their removal for land based exhibits. However, as previously indicated, in this Sanctuary, the SCR Action Plan provides for commercial salvage which will in turn result in the public display of certain recovered SCRs in museums and similar institutions of public access.

Inventory of SCRs: Responsibility & Expense

Comment: The HSSPC suggests that the Florida Department of State/Bureau of Archaeological Resources have the lead responsibility in the inventory of SCRs and that NOAA's role be limited to a financial assistance role. The HSSPC also suggested that the inventory be accomplished through the use of the private sector, when funding is available, in order to lessen the burden on taxpayers.

Response: No change was made to the plan regarding NOAA's lead responsibility for the inventory of SCRs because it is NOAA, not the State, that is legally responsible for accomplishing this task. Section 110 of the National Historic Preservation Act requires Federal agencies to inventory historic resources such as SCRs under the Federal agencies' management responsibility. However, as indicated in the plan, NOAA will work with the State and any other public and private entities interested in activities which fulfill this responsibility. Accordingly, the SCR Agreement has been revised to indicate that NOAA will also consider all public and private opportunities for accomplishing the inventory in a reasonable and cost-effective manner, including private sector funding through permits and otherwise.

Survey/Inventory Permits

Comment: The HSSPC suggested that the regulations expressly state that no Sanctuary permit is required for non-intrusive, non-exclusive remote sensing activities, but also suggested that the survey/inventory permits expressly grant exclusive rights to explore the permitted areas. The HSSPC also suggested that these permits provide for limited manual alteration of the seabed, including hand fanning, provided there is no negative impact to coral, seagrass, sponges and other natural resources.

Response: Section 922.42 of the regulations states that unless an activity is prohibited, it is expressly allowed. In addition, the sections on Sanctuary permits, certification, and authorizations indicate that they are only required for conducting activities which are prohibited by Sanctuary regulations. Non-intrusive remote sensing is not prohibited. Therefore, the regulations expressly state that such activity does not require a permit. The regulations will indicate that permits may provide for limited manual alteration of the seabed, including hand fanning, provided there is no adverse effect on Sanctuary resources. Such activity will continue to be considered on a case-by-case basis as part of the public interest balancing on whether to issue a permit and for determining the appropriate conditions to protect resources and manage multiple uses.

The HSSPC suggestion for exclusive rights for a survey-inventory permit is not entirely consistent with the suggestion that remote sensing not require a permit. NOAA cannot prevent non-intrusive remote sensing in an area unless it is prohibited in the regulations and the regulations do not prohibit remote sensing. However, NOAA and the State of Florida are cognizant of the underlying economic concerns of applicants and permittees in investing and expending financial resources. Therefore, in an effort to reconcile these comments, the regulations have been modified to indicate that NOAA will not grant survey and inventory permits or research and recovery permits for areas covered by existing permits, unless authorized by such permittee. There is no entitlement to these and other permits, rather it involves the discretionary authority of NOAA and the State of Florida in granting a privilege which is determined to be in the public's interest.

Volunteer Action Plan

Recruitment of Volunteers

Comment: A number of reviewers, including the SAC, recommended the development of a new strategy in the Volunteer Action Plan which targets the recruitment, training and recognition of Sanctuary volunteers.

Response: NOAA agrees with this comment and the management plan has been revised accordingly.

Volunteer Coordinator

Comment: Some reviewers expressed concern that the Sanctuary's Volunteer Coordinator is not a full-time NOAA employee and recommended that this be changed. Others stated their satisfaction with the Nature Conservancy's role in the volunteer program because of its stability and broad geographic influence.

Response: The Sanctuary's Volunteer Coordinator continues to effectively administer and oversee the Sanctuary's Volunteer Program. In the future, NOAA will consider whether it is either necessary or appropriate to modify the Volunteer Coordinator's role or position.

Water Quality Action Plan

Support the Water Quality Action Plan

Comment: Many reviewers of the draft management plan and Environmental Impact Statement commented on the issue of water quality within the Sanctuary. There was almost unanimous agreement that deteriorating water quality is the major threat to the health of Sanctuary resources and most supported actions to correct the problems. Many reviewers specifically expressed support for the Water Quality Action Plan (WQAP).

Response: NOAA agrees that the major threat to the health of the Florida Keys coral reef ecosystem is deteriorating water quality. The FKNMSPA directed EPA, in coordination with the State of Florida and NOAA, to develop a Water Quality Protection Program (WQPP) for the Sanctuary. This was the first Congressionally mandated Water Quality Protection Program for a National Marine Sanctuary and was established to take corrective actions to restore water quality in the Sanctuary. The Water Quality Action Plan reflects strategies developed under the Water Quality Protection Program.

Water Quality Is an Issue Broader Than the Sanctuary

Comment: Although the majority of the reviewers recognized that deteriorating water quality was the major threat to marine resources, the source or cause of problems was questioned. Many claimed the problems originate outside Sanctuary boundaries in the upper portions of Florida Bay, or come as a result of poor water management practices in south Florida. Reviewers stated that the problem is outside the FKNMS boundary, thus, the Sanctuary does not have the authority to

address these significant water quality issues.

Response: Some of the water quality problems in the Florida Keys occur outside and upstream of the Sanctuary's boundary. Deteriorating water quality in Florida Bay is largely a result of water management practices in south Florida as has been documented by scientists. Other scientists point to possible sources of nutrients and pollutants that enter Florida Bay through the Everglades drainage. The Florida Keys are at the end of the south Florida ecosystem and are the recipient of degraded water quality that originates upstream. While EPA, the State of Florida and other agencies will continue to address the land-based sources of pollution and water quality in the Sanctuary, particularly through the Water Quality Steering Committee and the South Florida Ecosystem Task Force, NOAA has an appropriate supplementary role in these efforts.

Water Quality Problems in Nearshore Waters

Comment: Some reviewers stated that there are no water quality problems in the Florida Keys. Other reviewers cited the poor wastewater treatment practices in the Florida Keys, such as septic tanks, injection wells, and cess pits, as the main source of water quality degradation in the Sanctuary. Storm water runoff was also viewed to as a contributing factor to poor water quality. Some reviewers cited the findings from a recently released State hearing officer's report.

Response: NOAA disagrees with the implication that there is not a water quality problem in the Florida Keys. Scientists have documented the decline of water quality in the nearshore waters of the Florida Keys. This deterioration is caused by a variety of sources including excessive nutrients entering the nearshore waters because of inadequate sewage treatment practices and problems related to storm water runoff. The findings of a State Hearing Officers were that the nearshore waters of the Florida Keys have exceeded their carrying capacity and are in danger of collapsing. In addition, the report identified nutrients originating from inadequate treatment facilities as the primary cause of nearshore water quality degradation in the Florida Keys.

The WQPP was established to take corrective actions to restore water quality in the Sanctuary. This must be accomplished at the same time as, or prior to, the restoration of water quality upstream in Florida Bay in order to be successful. Improvement of water quality in the FKNMS will not be successful if only the upstream or nearshore portion of the ecosystem is restored. All parts of the ecosystem, all the way to the coral reefs, must be restored and relieved of increasing human impacts.

Implementation

Comment: Some reviewers stressed that the implementation of the water quality action plan should supersede the implementation of other action plans such as zoning. They emphasized cleaning up the water quality problems before continuing with other management actions. Other reviewers stressed the importance of addressing the deteriorating water quality issue in the Sanctuary, but advocated implementation of a variety of management programs, including those that protect Sanctuary resources from continued degradation. In addition, some reviewers supported a plan with direct action strategies to correct water quality problems.

Response: NOAA agrees that the major issue affecting the health of the Florida Keys coral reef ecosystem is deteriorating water quality. Implementation of the WQAP and the WQPP for the FKNMS will lead to improvement of the water quality in the Sanctuary. Currently, some of the corrective actions identified in the WQPP are being implemented both within the boundaries of the Sanctuary and upstream in the South Florida ecosystem. These on-going activities will have a net positive benefit to Sanctuary resources.

However, NOAA disagrees that all other management actions should be deferred until the implementation of the WQPP and the WQAP for the FKNMS. Many of the management actions necessary to halt the decline of water quality in the Florida Keys will take years to implement, and the physical stresses and impacts currently placed on Sanctuary resources from other sources could be lessened with management actions such as mooring buoys to prevent anchor damage, channel markers to mark boating routes through sensitive habitats, and outreach programs to educate users about the resources of the Florida Keys.

Mosquito Spraying

Comment: Several reviewers expressed concern about NOAA's role in addressing current mosquito control practices in Monroe County.

Response: Representatives from FKNMS and Monroe County will work together through the Water Quality Protection Program to refine aerial mosquito spraying based on research findings. This action will reduce threats to marine resources which may result from mosquito spraying over the near-shore waters of the Florida Keys.

Zoning Action Plan

The Term Replenishment Reserve

Comment: Some reviewers expressed that the term Replenishment Reserve is confusing because it implies that these areas are for fisheries replenishment.

Response: NOAA has changed the name Replenishment Reserve to Ecological Reserve (ER). Ecological Reserve more accurately represents the purpose of this zone, that is, to restore natural ecosystem dynamics and habitat, by setting aside a portion of the coral reef environment (including seagrass beds, hardbottom, rubble habitat, patch reefs and sand areas) that is protected from all forms of ''harvesting''.

Establishment of Zones

Comment: Many commented on the Zoning Action Plan and proposed regulations regarding Sanctuary Preservation Areas, Wildlife Management Areas, Special-use Areas, and Ecological (formerly Replenishment) Reserves. Some recommended deleting all marine zoning; others recommended the zoned areas be expanded; while still others supported the zoning concept but recommended delay in implementation until there was more detailed scientific research and economic impact analysis of certain proposed zones. Some reviewers recommended zoned areas be closed to all human uses, except for boat transit. Many reviewers supported the proposed Zoning Action Plan including, in some instances, an increase in the amount of area proposed as Ecological Reserves.

As regards the Key Largo ER, some reviewers suggested that because of the existing protection afforded by the John Pennekamp Coral Reef State Park and the existing Key Largo National Marine Sanctuary, that the Key Largo ER would not provide significant additional protection for the area and should, therefore, be eliminated. A number of reviewers suggested that if not eliminated, the boundaries of the Key Largo ER should be shifted to the south. Several reviewers suggested that the elimination of the Key Largo ER be accompanied by an increase in the size of the Carysfort SPA to protect additional patch reef and coral habitat. Other reviewers suggested that the boundaries of the Dry Tortugas ER be reconfigured to minimize impacts on fishers. In addition, a number of

reviewers suggested reconfiguring the Dry Tortugas ER to encompass more of the reef community as opposed to low-profile, barren habitat, but not reducing its overall size. A number of reviewers also expressed concerns about commercial fishing displacement as a result of establishment of the Western Sambos ER.

Comments from some representatives of the recreational and commercial fishing industries and some individuals recommended elimination of all or some SPAs and ERs. These reviewers cited unreasonable burdens and negative economic impacts resulting from the closures, primarily due to displacement from closed areas. Examples of the uses most commonly cited as likely to be displaced are baitfishing, shrimping, and lobster trapping. Some recommended that bait fishing and catch and release trolling be allowed, while others were opposed to all fishing in SPAs.

The State of Florida Marine Fisheries Commission generally supported the proposed zoning, but recommended the elimination of the Key Largo ER and suggested making provisions to allow certain baitfish harvest. Other State and Federal agencies supported the proposed zoning and one recommended establishing an additional replenishment zone in the back country of the Keys. Other reviewers supported the Zoning Action Plan as proposed or recommended additional areas for inclusion.

The SAC recommended that the management plan: (1) Keep the proposed Special Preservation Areas as configured with provisions to allow bait fishing and catch and release trolling in selected SPAs; (2) keep the research-only areas; and (3) keep the Western Sambos ER but eliminate the proposed Key Largo ER; and reconfigure the Dry Tortugas ER.

Response: NOAA developed the Ecological Reserves to protect some of the most significant habitat, but in a manner to avoid or minimize impacts to fishers and other users. In the DMP/EIS, NOAA proposed boundaries based on distribution of the most significant coral habitats and spur and groove configurations and a user survey identifying where fishing, diving and other uses occur. NOAA also used maps provided by the SAC members that indicated specific information about the resources and uses of the marine resources. The goal was to include the most coral reef communities in a manner which avoids or minimizes economic impact to users, particularly fisherman. NOAA has modified the final regulations and management plan to reflect several of the recommendations made in the comments. Consistent with recommendations from the SAC and others, and upon careful weighing the environmental and socio-economic impacts, NOAA has retained the Western Sambos ER but revised its Zoning Plan to eliminate the Key Largo and defer the Dry Tortugas Ecological Reserves, add the Eastern Sambos Research-only Special-use Area and slightly expand the Carysfort SPA to include additional intermediate reef, back reef, and patch reef areas. In weighing the socio-economic impacts on commercial and recreational users against the additional benefit of the Key Largo ER, NOAA eliminated that Reserve from the final plan and regulations. The resource protection provided by the existing protected areas, John Pennekamp Coral Reef State Park, Key Largo National Marine Sanctuary, and Biscayne National Park contributed to this decision. NOAA has, however, enlarged the SPA at Carysfort Reef to protect additional patch reef and coral habitat.

Public comment also identified serious adverse economic impacts which would result from implementation of the no-take regulations within the proposed boundary of the Dry Tortugas ER. Recommendations suggested reconfiguring the boundary of that Reserve to minimize such impacts. Others recommended the Dry Tortugas ER be reconfigured to include additional reef communities. Consequently, NOAA did not set forth a boundary or regulations for the Dry Tortugas ER. Rather, NOAA will continue the process for establishing a proposed final boundary of the Dry Tortugas ER in coordination with the National Park Service, fishing representatives, scientists, and others to identify an appropriate final boundary for the Reserve, which may include portions of the Dry Tortugas National Park. NOAA and the National Park Service will use the information gathered as part of the public review of the draft management plan, and hold workshops with users, agency representatives, environmental organizations, scientists, and the public. Prior to making a final decision, the proposed final boundary of the Dry Tortugas ER will be published for public comment.

In summary, public comments indicated that the impacts on fishers from the proposed Replenishment Reserves were greater than considered in the DMP/EIS. As a result, the final regulations designate the Western Sambos area as an ER. The Key Largo and Dry Tortugas areas were not made ERs in order to minimize adverse impacts to fishers. An area of the Dry Tortugas with a boundary with less of an adverse impact on fishers will be proposed to be designated at a later date.

Bait Fishing

Comment: Some reviewers recommended allowing baitfishing in SPAs and ERs or reducing the number or size of SPAs to lessen the impact on baitfishing.

Response: NOAA has revised the management plan to provide for the issuance of permits for limited bait fishing in SPAs rather than reduce the number of SPAs. NOAA will issue permits for catching ballyhoo for bait by net.

Catch and Release Trolling

Comment: Some reviewers recommended allowing catch and release trolling in SPAs and ERs or reducing the number or size of SPAs to lessen the impact on this activity.

Response: Catch and release fishing will continue to be allowed throughout greater than 98 percent of the Sanctuary. In addition, NOAA has modified the management plan and regulations to allow catch and release trolling in four of the eighteen SPAs: Conch Reef, Alligator Reef, Sombrero Key, and Sand Key. This will facilitate multiple uses and allow for comparisons to be made between SPAs, therefore determining the impact of catch and release trolling.

Snorkeling/Diving Access

Comment: Some reviewers expressed concern about the lack of restrictions on divers and snorkelers in the zones, asserting they harm coral and other Sanctuary resources, while others commented that there should be no access at all to any zones where access is restricted to any one group.

Response: NOAA does not agree that all zones should be entirely closed to public access. Non-consumptive use of SPAs and ERs is compatible with the purposes for which they were established. Consumptive activities (e.g., spearfishing, fish collecting, shell collecting, lobstering) are prohibited in SPAs and ERs. Non-consumptive activities (e.g., diving, snorkeling) are not expressly prohibited, however regulations prohibit consumptive activities such as spearfishing, and prohibit physical impacts to corals and coral reef habitat by prohibiting contact (e.g., touching and standing). Snorkeling and diving will be allowed in the Research-only Special-use Areas only by permit. By being closed to snorkeling and diving, these areas may then be

compared to SPAs and ERs to examine diver impacts.

Support the Zoning Plan

Comment: NOAA received a number of comments generally supporting the Zoning Action Plan as proposed or requesting a larger proportion of zoned areas.

Response: The zoning plan is the first attempt at large scale marine zoning in the USA. Five years after the zones are implemented, NOAA will lead a team to evaluate the effectiveness of zoning in ecosystem protection. At that time the zones will be re-evaluated and may be modified as necessary and/or appropriate.

Zoning Is Too Overbearing or Will Limit Work/Play

Comment: A number of reviewers expressed concern that the zoning scheme is too restrictive and will unduly limit their ability to conduct recreational and commercial activities.

Response: NOAA does not agree that the Zoning Action Plan overly restricts traditional uses of the resources. The area encompassed by the zones, including a Dry Tortugas ER, a boundary for which will be proposed in the future, will comprise no more than five percent of the Sanctuary. Moreover, non-consumptive uses (e.g., diving, snorkeling) will not be prohibited in all zones. Consumptive uses (e.g., commercial and sport fishing) will be restricted in SPAs and ERs and some Special-use Areas. However, based on aerial surveys and visitor use data, approximately 94 percent of the recreational fishers fish outside these zones on a regular basis. Commercial fishers agreed early in the planning process that they do not rely on SPAs as areas to conduct their activities. The impact of ERs has been raised as a concern because of the perceived displacement of commercial activities (e.g., fishers). The ERs have been re-designed to minimize impacts to such activities through a process that relied on input from commercial fishers. This input, in part, led NOAA to eliminate the Key Largo ER, and postpone the establishment of a Dry Tortugas ER.

Sanctuary Preservation Areas and Ecological Reserves

Comment: Some reviewers expressed opposition to all SPAs and ERs.

Response: The purpose of a SPA is to protect a heavily used area of the marine environment (e.g., coral reefs) where conflicts often occur between user groups. These areas are critical for protecting the coral reefs and biodiversity of the FKNMS. The purpose of an ER is to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and to protect and preserve natural assemblages of habitats and species, and restore natural ecosystem dynamics. The FKNMSPA directed NOAA to consider temporal and geographic zoning. Zoning is a proven tool for marine conservation and is consistent with NOAA's mandate to accommodate multiple, compatible uses by providing long-term benefits to all consumptive and non-consumptive users through increased biodiversity.

Ecological Reserves are Redundant With Fisheries Management

Comment: Eliminate all ERs because they are redundant with traditional fisheries management.

Response: NOAA does not agree. Zoning in the FKNMS is for habitat protection and to preserve biodiversity, not for fisheries management. Traditional fisheries management focuses on managing stocks of a small number of the over 6000 species reported in the FKNMS. The primary purpose of an ER is to protect a portion of the coral reef environment (including seagrass beds, hardbottom, rubble habitats, patch reefs and sand areas) from all forms of harvesting in order to restore natural ecosystem dynamics.

The establishment of no-take areas in specific portions of the coral reef tract should lead to replenishment of reef inhabitants that are currently being lost, or whose balance in the ecosystem has been altered. Moreover, with respect to fish stocks, some fisheries scientists suggest that ERs provide ancillary benefits to fisheries, similar to ''harvest refugia'' and other protected fisheries areas. The ERs are an important tool for effective ecosystem management in the FKNMS. NOAA will monitor the effectiveness of zoning in ecosystem protection and consider modifications as necessary and reasonably appropriate.

A Monitoring Program Is Needed To Determine the Viability of Zoning

Comment: A number of reviewers recommended the establishment of a monitoring program to assess the viability of the zoning scheme.

Response: The Zoning Action Plan provides for the establishment of a five-year monitoring program to assess the effectiveness of zoning in the Sanctuary.

Western Sambos Ecological Reserve

Comment: A number of reviewers expressed concerns about commercial fishing displacement as a result of establishment of the Western Sambos ER.

Response: NOAA believes there will be some displacement of fishermen, but that the long-term environmental benefits will far outweigh short-term economic losses. The ecological value of protecting the area does not warrant eliminating or modifying the boundary of the ER.

Establishment of a Back Country ER and/or an Alligator Reef ER

Comment: Several reviewers recommended the establishment of an ER in the Back Country and/or Alligator Reef. The State of Florida recommended the establishment of a Back Country ER.

Response: A full ecosystem representation in a comprehensive zoning plan should include Back Country marine habitats. However, given the priorities established in the Zoning Action Plan, this cannot be accomplished in the short-term, but will be considered for future implementation in the five year review cycle.

Jewfish and Steamboat Creek Wildlife Management Areas

Comment: Some reviewers indicated that fishers and others regularly transit through Jewfish Creek and Steamboat Creek and raised concern over the proposed designation of no-access buffers in the Crocodile Lake Wildlife Management Area.

Response: NOAA agrees. There was no intent to prohibit the use of this area for transit. Thus, consistent with existing US Fish and Wildlife Service regulations, the no-access designation was removed from the final management plan and regulations.

Crocodile Lake Wildlife Management Area

Comment: Some reviewers indicated that the Crocodile Lake Wildlife Management Area no-access restriction was too limiting.

Response: NOAA agrees and, upon consultation with the US Fish and Wildlife Service and the Florida Game and Freshwater Fish Commission, changed the designation of Crocodile Lake Wildlife Management Area to a no-access buffer zone (100 feet) along the shoreline between the dates March 1 and October 1.

Pelican Shoal Research-Only Special-Use Area

Comment: Many reviewers requested that Pelican Shoal be kept open to public access. The Department of the Interior requested that a 50 meter buffer be established during Roseate Tern nesting season.

Response: NOAA agrees and has eliminated Pelican Shoal as a Research-only Special-use Area. It has been replaced with the Eastern Sambos Research-only Special-use Area. The new area will provide a better research and monitoring site, while simultaneously lessening impact on the public from limiting access to the reef around Pelican Shoal. However, in order to complement the State's seasonal closure of the land area, NOAA has designated a no-access 50 meter buffer as a Wildlife Management Area around Pelican Shoal between April 1 and August 31. These dates coincide with those established by the Florida Game and Freshwater Fish Commission for the protection of nesting terns.

Research Only Areas

Comment: Many comments supported the establishment of research-only zones.

Response: NOAA agrees that some zones should be used to determine the impacts of specific activities, such as diving and fishing. The final management plan and regulations establish four Research-only Special-use Areas. Pelican Shoal was eliminated as a Research-only Special-use Area and a Research-only Special-use Area surrounding the forereef habitat at Eastern Sambos has been added in its place. The Eastern Sambos area will serve as a control to determine the impacts of specific activities such as diving, snorkeling and fishing. Furthermore, Eastern Sambos, which is located in an area of good water quality, can be compared with the Tennessee Reef Research-only Special-use Area, located in an area of poor water quality. The impacts associated with water quality as compared to those from human uses can also be determined from research and monitoring at these sites.

V. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304 of the NMSA requires the Secretary to submit to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the same day as this notice is published, the final terms of the designation, the final regulations, a FEIS, and a FMP detailing the final goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement and surveillance activities, for the area. In accordance with Section 304, the required documents are being submitted to the specified Congressional Committees.

Executive Order 12866

Under Executive Order 12866, if a regulatory action is significant as defined in section (3)(f) of the Order, an assessment of the potential costs and benefits of the action must be prepared and submitted to the Office of Information and Regulatory Affairs (OIRA) of OMB. The Administrator of NOAA has determined that although this regulatory action is not expected to ''have an annual effect on the economy of $100 million or more,'' or otherwise meet the definition of a significant regulation under section 3(f) (1), (2), or (3), it is significant under section 3(f) (4) in that certain controversial and innovative aspects of the regulations may ''[r]aise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in [the] Executive Order.''

Therefore, NOAA's assessment of the potential socio-economic impacts on various user groups in the environmental impact statement has been designed to also satisfy the Regulatory Impact Review (RIR) requirements of Executive Order 12866. The assessment is contained in three sections of the FMP/EIS:

(1) Volume III, *Appendix M, Assessment of the Potential Costs and Benefits of the Final Management Plan Regulations.*

This appendix constitutes the primary component of both the RIR and NOAA's FEIS. Appendix M reviews the problems and policy objectives prompting the regulatory proposals and evaluates the major alternatives that were considered. It demonstrates that NOAA systematically and comprehensively considered all available alternatives in order to ensure that the public welfare would be enhanced in the most efficient and cost effective way possible.

(2) Volume II, pp. 175–96, *The Socioeconomic Impacts of Management Alternatives.*

This section is the socio-economic impact analysis of the final plan and supplements Appendix M.

(3) Volume I, pp 9–40, *The Preferred Alternative/Management Plan.*

This section is the heart of the EIS and describes the process and reasoning of selecting the preferred alternative upon consideration of public comments on the FMP/EIS and balancing the goals and requirements of the NMSA and NEPA. It provides a narrative explanation of the way in which resource protection and the public welfare were considered together in building the FMP.

NOAA's socioeconomic assessment places special emphasis on the marine zones established by the regulations, and the conduct of activities in those zones. Particular attention is paid to the ERs and SPAs, since the concept of no-take zones or reserves is the most innovative and controversial element of the management plan and regulations, and has aroused significant public interest and debate. NOAA has concluded that these regulations will have broad benefits to most users of the Florida Keys, especially the tourist industry which is very significant from a local and State perspective. No significant adverse socioeconomic impacts are anticipated to non-consumptive users. Among consumptive users, most will not be affected greatly by the marine zoning regulations but a small percentage will undergo some costs from displacement from no-take areas. These costs are expected to be offset with time as better habitat protection and protection of biodiversity within the zones improves the ecological health of the area.

Other regulations which received considerable public scrutiny include those affecting the operation of vessels, particularly personal watercraft (PWC) (e.g., jet-skis); and to a lesser extent the SCR permit system regulation of commercial treasure salvage. NOAA's approach to the PWC issue was multi-pronged and resulted in regulations that apply to PWC as well as other vessels, and non-regulatory management strategies which specifically apply to PWC. NOAA took public input into account, as in its approach to all the regulations. The final preferred alternative attempts to address user conflicts and environmental concerns by avoiding regulatory impacts as much as possible consistent with the major objectives of the Sanctuary. The process is described in Vol. 1, pp. 16–17, in Appendix L (Comments Received on the DMP/EIS and NOAA's Response), and in Appendix M.

NOAA also considered public comments, particularly those from the commercial treasure salvage community, in revising the SCR permit system to make it more pragmatic from the perspective of commercial salvors while maintaining the primary objective of protecting the submerged cultural resources. (See Vol. 1, pp. 20–24, and the relevant sections in Appendix L and Appendix M.)

NOAA's preferred alternative in the FMP for zoning, PWC, the SCR permit system and other issues has taken public comment into full account and represents a considerable alteration from the draft plan so as to disrupt users

as little as possible, without compromising the objectives of the Sanctuary.

Regulatory Flexibility Act

As indicated in the FMP/EIS, and the response to comments, the proposed Sanctuary regulations have been revised in careful consideration of the impacts to the environment including socioeconomic impacts on Sanctuary users, the large majority of which are small business entities. Representatives of the user groups, including the small entities were identified in the earliest stages of program development and have participated throughout the public process. Small entities were represented on the SAC, including fishing entities, vessel-charter operators, recreation-tourism industry and commercial treasure salvors.

The FMP/EIS sets forth the extensive public process which included participation from the small entities operating in the Sanctuary at SAC deliberations, as well as numerous Sanctuary user group workshops and other public meetings. The economic impacts to the Sanctuary user groups, which are almost entirely small entities, were considered throughout the public process of plan-rule development. The impacts on small entities which use the Sanctuary were considered as part of the delicate balancing of protecting resources, and facilitating compatible multiple use of the Sanctuary in a manner which ensures a sustainable use of the Sanctuary for present and future generations. The socioeconomic assessment briefly summarized the impacts on users from various management strategy alternatives. Over 6,000 public comments were received on the DEIS/MP and the proposed regulations. In addition to comments from the aforementioned small entities, thousands of comments were received from individuals working in the PWC industry. Some representatives of the fishing industry criticized the DEIS socioeconomic assessment of the zoning scheme.

In developing the final management plan and regulations, the SAC's recommendations and the public comments were fully considered.

The final regulations specifically allow all activities to be conducted in the Sanctuary other than those activities that are specifically prohibited by the regulations or by other applicable regulations and laws. Many of the activities that these regulations prohibit are already prohibited by the terms of the FKNMSPA, as well as by other State and Federal laws and regulations.

The regulatory procedures for requesting certifications for pre-existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity or an activity that would be prohibited, and for notifying NOAA of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity or an activity that would be prohibited will all act to lessen any adverse economic effects on small entities.

Because the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed regulations, if adopted, would not have a significant economic impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis (IRFA) was not prepared. Nevertheless, because the final regulations will affect a substantial number of small entities, although not in an economically significant way, and particularly because some representatives of the small entity fishing industry criticized the DEIS socioeconomic assessment of the zoning scheme, a Final Regulatory Flexibility Analysis (FRFA) was prepared that fully complies with the requirements of Regulatory Flexibility Act. Those requirements are found in section 604 of Title 5, United States Code.

Section 604(a)(1) requires that the FRFA contain a succinct statement of the need for, and objectives of, the rule. The FKNMSPA mandated the development of a FMP and implementing regulations in order to protect and manage Sanctuary resources in manner which facilitates multiple use of the Sanctuary which are compatible with the primary objective of resource protection. The FMP/EIS and responses to comments provide more specific details on the need for, and objectives of, particular rules.

Section 604(a)(2) requires a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments. While an IRFA was not prepared, small business entities, including fisherman, charter boat operators, commercial treasure salvors and tourist related industries did comment on the draft regulations. NOAA's response to the comments is set forth above, and is further explained in summary form in the selection of the preferred alternative.

Section 604(a)(3) requires a description of, and an estimate of, the number of small entities to which the rule will apply or an explanation of why no such estimate is available. The small businesses that directly use the Sanctuary and its resources and therefore will be subject to the Sanctuary regulations include fisherman, salvors, commercial treasure salvors, recreational charter boat operators, and other tourist related operations. The FRFA sets forth the number of small entities that may be affected by the regulations. The small entities include: 1,875 fisherpersons with restricted species licenses, 535 licensed for-hire fishing firms, 100 dive charter businesses, 186 marinas, 75 boat rental businesses, 73 seafood dealers, 26 marine salvage companies (recent casulaties), and 8 to 12 commercial treasure salvage companies (does not include individuals who have not incorporated).

Section 604(a)(4) requires that the FRFA contain a description of the reporting, record keeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record. The Sanctuary regulations require that permittees submit status reports for activities covered by Sanctuary permits. The permitee must submit one or more reports on the status, progress, or results of any activity authorized by a permit. The permittee must submit an annual report which describes all activities conducted under the permit and all revenues derived from such activities during the year and/or the term of the permit. The reporting requirement for SCR permits may be more rigorous than the existing State contracts, but they are necessary to preserve historical and archaeological information consistent with existing Federal historic preservation laws. The number of small entities which must comply with this requirement depends on the number of applicants, and this is expected to be less than 20 applicants per year.

Section 604(a)(5) requires a description of the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect

the impact on small entities was rejected. Nearly every user of the Sanctuary is a small entity. Thus, no broad accommodation for small entities could be selected without compromising the resource protection mandated of the NMSA and the FKNMSPA. However, as indicated in the comments and responses, the selection of the preferred alternative and the socio-economic impact analysis, particular regulations were revised based on comments from user groups which are small business entities to lessen adverse economic impacts on them where not inconsistent with the objectives and purposes of the Sanctuary. For example, two ERs were deleted in light of comments of the socioeconomic impacts on fishermen. The SCR permit regulations were revised pursuant to comments of commercial treasure salvors in order to make the permit requirements more reasonable, practical and economically feasible from the user's perspective.

As noted earlier, the final regulations specifically allow all activities to be conducted in the Sanctuary other than those activities that are specifically prohibited by the regulations or by other applicable regulations and laws. The procedures in these regulations for applying for National Marine Sanctuary permits to conduct otherwise prohibited activities, for requesting certifications for pre-existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity, and for notifying NOAA of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity would all act to lessen any adverse economic effect on those conducting activities small entities. The final regulations, in total, are not expected to have a significant economic impact on a substantial number of small entities. A copy of the FRFA may be obtained upon request (See Addresses).

Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act (Pub. L. No. 96–511), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This final rule contains collection of information requirements subject to the requirements of the Paperwork Reduction Act. These requirements are as follows: general permits, historical resource permits, special use permits, notifications, certifications, and appeals. The collection of information requirement applies to persons seeking permits to conduct otherwise prohibited activities and is necessary to determine whether the final activities are consistent with the management goals for the Sanctuary. The collection of information requirement contained in the final rule has been approved by the Office of Management and Budget. The public reporting burden per respondent for the collection of information contained in this rule is estimated to average 1.5 hours for general permit applications and reports, 6 hours for historical resource and special use permit applications and reports, 0.5 hours for requests for notifications or certifications of applications, and 0.25 hours for appeals. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public on the collection of information requirement, the burden estimates, and ways of reducing these burdens are specifically invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: Desk Officer for NOAA); and to Richard Roberts, Room 724, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12612

A Federalism Assessment (FA) was prepared for the proposed designation document, draft management plan, and proposed implementing regulations. The FA concluded that all would be fully consistent with the principles, criteria, and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685). Copies of the FA are available upon request to the Office of Ocean and Coastal Resource Management at the address listed in the address section above.

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)), and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(a)), a draft and final EIS were prepared for the designation and the regulations. As required by section 304(a)(2), the EIS' include the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundaries of the designated area, and the existing and potential uses and resources of the area. Copies of the FEIS are available upon request to the Office of Ocean and Coastal Resource Management at the address listed in the address section above.

Executive Order 12630

This final rule does not have takings implications within the meaning of Executive Order 12630 because it does not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation. While the prohibition on the exploration for, development, production of minerals and hydrocarbons from the Sanctuary might have a takings implication if it abrogated an existing lease for Outer Continental Shelf (OCS) tracts within the Sanctuary or an approval of an exploration or development and production plan, no OCS leases have been sold for tracts within the Sanctuary and no exploration or production and development plans have been filed or approved.

Unfunded Mandates Reform Act of 1995

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

List of Subjects in 50 CFR Parts 922, 929 and 937

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: January 21, 1997.

David Evans,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for Part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Section 922.1 is revised as follows:

§ 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D and E apply to all eleven National Marine Sanctuaries for which site-specific regulations appear in subparts F through P, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

3. Section 922.3 is amended by revising the definitions of ''Historical resource'', ''National Marine Sanctuary'', and ''Sanctuary quality'' as follows:

§ 922.3 Definitions.

* * * * *

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include ''submerged cultural resources'', and also include ''historical properties,'' as defined in the National Historic Preservation Act, as amended, and its implementing regulations, as amended.

* * * * *

Sanctuary quality means any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.

* * * * *

§ 922.3 [Amended]

4. In § 922.3, in the first sentence of the definition of ''Sanctuary resource'' the word ''none-living'' is revised to read ''non-living''.

5. In § 922.3, in the first sentence of the definition of ''State'' the word ''Samos'' is revised to read ''Samoa''.

6. In § 922.3, in the first sentence of the definition of ''Take or taking'' the word ''would'' is revised to read ''wound''.

7. Section 922.40 is revised to read as follows:

§ 922.40 Purpose.

The purpose of the regulations in this subpart and in subparts F through P of this part is to implement the designations of the eleven National Marine Sanctuaries for which site specific regulations appear in subparts F through P of this part, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys National Marine Sanctuary are found at § 922.160.

8. Section 922.41 is revised to read as follows:

§ 922.41 Boundaries.

The boundary for each of the eleven National Marine Sanctuaries covered by this part is described in subparts F through P of this part, respectively.

9. Section 922.42 is revised to read as follows:

§ 922.42 Allowed Activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in subparts F through P of this part, subject to any emergency regulations promulgated pursuant to §§ 922.44, 922.111(c), or § 922.165, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject to the provisions of section 312 of the Act. The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

10. Section 922.43 is revised to read as follows:

§ 922.43 Prohibited or otherwise regulated activities.

Subparts F through P of this part set forth site-specific regulations applicable to the activities specified therein.

11. Section 922.44 is revised to read as follows:

§ 922.44 Emergency Regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank and Florida Keys National Marine Sanctuaries. See §§ 922.111(c) and 922.165, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.

12. Section 922.45 is amended by revising paragraph (a) as follows:

§ 922.45 Penalties.

(a) Each violation of the NMSA or FKNMSPA, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $ 100,000. Each day of a continuing violation constitutes a separate violation.

* * * * *

13. Section 922.47 is amended by revising paragraph (b) as follows:

§ 922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

* * * * *

(b) The prohibitions listed in subparts F through P of this part do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in this subpart P, and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P of this part, and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as the Director deems necessary to achieve the purposes for which the Sanctuary was designated.

14. Section 922.48 is amended by revising paragraphs (a) and (b) as follows:

§ 922.48 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by subparts F through O of this part if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O of this part. For the Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by subpart P if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.166.

(b) Applications for permits to conduct activities otherwise prohibited by subparts F through O of this part

should be addressed to the Director and sent to the address specified in subparts F through O of this part. An application must include:

* * * * *

15. Section 922.49 is revised to read as follows:

§ 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by subparts L through P of this part if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in subpart P of this part, provided that:

(1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P of this part, whichever is later;

(2) The applicant complies with the other provisions of this § 922.49;

(3) The Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and

(4) The applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by subparts L through P of this part.

(c) Notification of filings of applications should be sent to the Director, Office of Ocean and Coastal Resource Management at the address specified in subparts L through P of this part. A copy of the application must accompany the notification.

(d) The Director may request additional information from the applicant as he or she deems reasonably necessary to determine whether to object to issuance of an authorization described in paragraph (a) of this section, or what terms and conditions are reasonably necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the application.

(e) The Director shall notify, in writing, the agency to which application has been made of his or her pending review of the application and possible objection to issuance. Upon completion of review of the application and information received with respect thereto, the Director shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems reasonably necessary to protect Sanctuary resources and qualities, and reasons therefor.

(f) The Director may amend the terms and conditions deemed reasonably necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this § 922.49 may be extended by the Director for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the provisions of § 922.50.

16. In § 922.50 paragraphs (a)(1) and (a)(1)(iii) are amended by moving ''L through O'' and adding ''L through P''.

17. Part 922 is amended by adding a new subpart P immediately following subpart O as follows:

Subpart P—Florida Keys National Marine Sanctuary

Sec. 922.160 Purpose.
Sec. 922.161 Boundary.
Sec. 922.162 Definitions.
Sec. 922.163 Prohibited activities—Sanctuary-wide.
Sec. 922.164 Additional activity regulations by Sanctuary area.
Sec. 922.165 Emergency regulations.
Sec. 922.166 Sanctuary permits—application procedures and issuance criteria.
Sec. 922.167 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.
Appendix I to Subpart P of Part 922—Florida Keys National Marine Sanctuary boundary coordinates
Appendix II to Subpart P of Part 922—Existing Management Areas boundary coordinates
Appendix III to Subpart P of Part 922—Wildlife Management Areas access restrictions
Appendix IV to Subpart P of Part 922—Ecological Reserves boundary coordinates
Appendix V to Subpart P of Part 922—Sanctuary Preservation Areas boundary coordinates
Appendix VI to Subpart P of Part 922—Special-use Areas boundary coordinates and use designations
Appendix VII to Subpart P of Part 922—Areas To Be Avoided boundary coordinates
Appendix VIII to Subpart P of Part 922—Marine Life Rule

Subpart P—Florida Keys National Marine Sanctuary

§ 922.160 Purpose.

The purpose of the regulations in this part is to implement the comprehensive management plan for the Florida Keys National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary is designated, in order to protect, preserve and manage the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of the area. In particular, the regulations in this part are intended to protect, restore, and enhance the living resources of the Sanctuary, to contribute to the maintenance of natural assemblages of living resources for future generations, to provide places for species dependent on such living resources to survive and propagate, to facilitate to the extent compatible with the primary objective of resource protection all public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities, to reduce conflicts between such compatible uses, and to achieve the other policies and purposes of the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act.

§ 922.161 Boundary.

The Sanctuary consists of all submerged lands and waters from the mean high water mark to the boundary described in Appendix I to this part, with the exception of areas within the Dry Tortugas National Park. Appendix I to this subpart sets forth the precise Sanctuary boundary established by the Florida Keys National Marine Sanctuary and Protection Act. (See FKNMSPA section 5(b)(2)).

§ 922.162 Definitions.

(a) The following definitions apply to the Florida Keys National Marine Sanctuary regulations. To the extent that a definition appears in § 922.3 and this section, the definition in this section governs.

Acts means the Florida Keys National Marine Sanctuary and Protection Act, as amended, (FKNMSPA) (Pub. L. 101–

605), and the National Marine Sanctuaries Act (NMSA), also known as Title III of the Marine Protection, Research, and Sanctuaries Act, as amended, (MPRSA) (16 U.S.C. 1431 et seq.).

Adverse effect means any factor, force, or action that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms any Sanctuary resource, as defined in section 302(8) of the NMSA (16 U.S.C. 1432(8)) and in this section, or any of the qualities, values, or purposes for which the Sanctuary is designated.

Airboat means a vessel operated by means of a motor driven propeller that pushes air for momentum.

Areas To Be Avoided means the areas in which vessel operations are prohibited pursuant to section 6(a)(1) of the FKNMSPA (see § 922.164(a)). Appendix VII to this subpart sets forth the geographic coordinates of these areas, including any modifications thereto made in accordance with section 6(a)(3) of the FKNMSPA.

Closed means all entry or use is prohibited.

Coral means the corals of the Class Hydrozoa (stinging and hydrocorals); the Class Anthozoa, Subclass Hexacorallia, Order Scleractinia (stony corals) and Antipatharia (black corals).

Coral area means marine habitat where coral growth abounds including patch reefs, outer bank reefs, deepwater banks, and hardbottoms.

Coral reefs means the hard bottoms, deep-water banks, patch reefs, and outer bank reefs.

Ecological Reserve means an area of the Sanctuary consisting of contiguous, diverse habitats, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, intended to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary. Appendix IV to this subpart sets forth the geographic coordinates of these areas.

Existing Management Area means an area of the Sanctuary that is within or is a resource management area established by NOAA or by another Federal authority of competent jurisdiction as of the effective date of these regulations where protections above and beyond those provided by Sanctuary-wide prohibitions and restrictions are needed to adequately protect resources. Appendix II to this subpart sets forth the geographic coordinates of these areas.

Exotic species means a species of plant, invertebrate, fish, amphibian, reptile or mammal whose natural zoogeographic range would not have included the waters of the Atlantic Ocean, Caribbean, or Gulf of Mexico without passive or active introduction to such area through anthropogenic means.

Fish means finfish, mollusks, crustaceans, and all forms of marine animal and plant life other than marine mammals and birds.

Fishing means: (1) The catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or any operation at sea in support of, or in preparation for, any activity described in this subparagraph (1).

(2) Such term does not include any scientific research activity which is conducted by a scientific research vessel.

Hardbottom means a submerged marine community comprised of organisms attached to exposed solid rock substrate. Hardbottom is the substrate to which corals may attach but does not include the corals themselves.

Idle speed only/no-wake means a speed at which a boat is operated that is no greater than 4 knots or does not produce a wake.

Idle speed only/no-wake zone means a portion of the Sanctuary where the speed at which a boat is operated may be no greater than 4 knots or may not produce a wake.

Live rock means any living marine organism or an assemblage thereof attached to a hard substrate, including dead coral or rock but not individual mollusk shells (e.g., scallops, clams, oysters). Living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to: sea anemones (Phylum Cnidaria: Class Anthozoa: Order Actinaria); sponges (Phylum Porifera); tube worms (Phylum Annelida), including fan worms, feather duster worms, and Christmas tree worms; bryozoans (Phylum Bryzoa); sea squirts (Phylum Chordata); and marine algae, including Mermaid's fan and cups (Udotea spp.), corraline algae, green feather, green grape algae (Caulerpa spp.) and watercress (Halimeda spp.).

Marine life species means any species of fish, invertebrate, or plant included in sections (2), (3), or (4) of Rule 46–42.001, Florida Administrative Code, reprinted in Appendix VIII to this subpart.

Military activity means an activity conducted by the Department of Defense with or without participation by foreign forces, other than civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers.

No-access buffer zone means a portion of the Sanctuary where vessels are prohibited from entering regardless of the method of propulsion.

No motor zone means an area of the Sanctuary where the use of internal combustion motors is prohibited. A vessel with an internal combustion motor may access a no motor zone only through the use of a push pole, paddle, sail, electric motor or similar means of operation but is prohibited from using it's internal combustion motor.

Not available for immediate use means not readily accessible for immediate use, e.g., by being stowed unbaited in a cabin, locker, rod holder, or similar storage area, or by being securely covered and lashed to a deck or bulkhead.

Officially marked channel means a channel marked by Federal, State of Florida, or Monroe County officials of competent jurisdiction with navigational aids except for channels marked idle speed only/no wake.

Personal watercraft means any jet or air-powered watercraft operated by standing, sitting, or kneeling on or behind the vessel, in contrast to a conventional boat, where the operator stands or sits inside the vessel, and that uses an inboard engine to power a water jet pump for propulsion, instead of a propeller as in a conventional boat.

Prop dredging means the use of a vessel's propulsion wash to dredge or otherwise alter the seabed of the Sanctuary. Prop dredging includes, but is not limited to, the use of propulsion wash deflectors or similar means of dredging or otherwise altering the seabed of the Sanctuary. Prop dredging does not include the disturbance to bottom sediments resulting from normal vessel propulsion.

Prop scarring means the injury to seagrasses or other immobile organisms attached to the seabed of the Sanctuary caused by operation of a vessel in a manner that allows its propeller or other running gear, or any part thereof, to cause such injury (e.g., cutting seagrass rhizomes). Prop scarring does not include minor disturbances to bottom sediments or seagrass blades resulting from normal vessel propulsion.

Residential shoreline means any man-made or natural:

(1) Shoreline,

(2) Canal mouth,

(3) Basin, or

(4) Cove adjacent to any residential land use district, including improved subdivision, suburban residential or suburban residential limited, sparsely settled, urban residential, and urban residential mobile home under the Monroe County land development regulations.

Sanctuary means the Florida Keys National Marine Sanctuary.

Sanctuary Preservation Area means an area of the Sanctuary that encompasses a discrete, biologically important area, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Appendix V to this subpart sets forth the geographic coordinates of these areas.

Sanctuary wildlife means any species of fauna, including avifauna, that occupy or utilize the submerged resources of the Sanctuary as nursery areas, feeding grounds, nesting sites, shelter, or other habitat during any portion of their life cycles.

Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: *Thalassia testudinum* (turtle grass); *Syringodium filiforme* (manatee grass); *Halodule wrightii* (shoal grass); *Halophila decipiens, H. engelmannii, H. johnsonii;* and *Ruppia maritima.*

Special-use Area means an area of the Sanctuary set aside for scientific research and educational purposes, recovery or restoration of Sanctuary resources, monitoring, to prevent use or user conflicts, to facilitate access and use, or to promote public use and understanding of Sanctuary resources. Appendix VI to this part sets forth the geographic coordinates of these areas.

Tank vessel means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(1) Is a United States flag vessel;

(2) Operates on the navigable waters of the United States; or

(3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States [46 U.S.C. 2101].

Traditional fishing means those commercial or recreational fishing activities that were customarily conducted within the Sanctuary prior to its designation as identified in the Environmental Impact Statement and Management Plan for this Sanctuary.

Tropical fish means any species included in section (2) of Rule 46–42.001, Florida Administrative Code, reproduced in Appendix VIII to this subpart, or any part thereof.

Vessel means a watercraft of any description, including, but not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes while maneuvering on the water, capable of being used as a means of transportation in/on the waters of the Sanctuary. For purposes of this part, the terms ''vessel,'' ''watercraft,'' and ''boat'' have the same meaning.

Wildlife Management Area means an area of the Sanctuary established for the management, protection, and preservation of Sanctuary wildlife resources, including such an area established for the protection and preservation of endangered or threatened species or their habitats, within which access is restricted to minimize disturbances to Sanctuary wildlife; to ensure protection and preservation consistent with the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. Appendix III to this subpart lists these areas and their access restrictions.

(b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 33 U.S.C. 1401 et seq. and 16 U.S.C. 1431 et seq.

§ 922.163 Prohibited activities—Sanctuary-wide.

(a) Except as specified in paragraph (b) through (e) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) *Mineral and hydrocarbon exploration, development and production.* Exploring for, developing, or producing minerals or hydrocarbons within the Sanctuary.

(2) *Removal of, injury to, or possession of coral or live rock.* (i) Moving, removing, taking, harvesting, damaging, disturbing, breaking, cutting, or otherwise injuring, or possessing (regardless of where taken from) any living or dead coral, or coral formation, or attempting any of these activities, except as permitted under 50 CFR part 638.

(ii) Harvesting, or attempting to harvest, any live rock from the Sanctuary, or possessing (regardless of where taken from) any live rock within the Sanctuary, except as authorized by a permit for the possession or harvest from aquaculture operations in the Exclusive Economic Zone, issued by the National Marine Fisheries Service pursuant to applicable regulations under the appropriate Fishery Management Plan, or as authorized by the applicable State authority of competent jurisdiction within the Sanctuary for live rock cultured on State submerged lands leased from the State of Florida, pursuant to applicable State law. *See* § 370.027, Florida Statutes and implementing regulations.

(3) *Alteration of, or construction on, the seabed.* Drilling into, dredging, or otherwise altering the seabed of the Sanctuary, or engaging in prop-dredging; or constructing, placing or abandoning any structure, material, or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels in a manner not otherwise prohibited by this part (see §§ 922.163(a)(5)(ii) and 922.164(d)(1)(v));

(ii) Traditional fishing activities not otherwise prohibited by this part;

(iii) Installation and maintenance of navigational aids by, or pursuant to valid authorization by, any Federal, State, or local authority of competent jurisdiction;

(iv) Harbor maintenance in areas necessarily associated with Federal water resource development projects in existence on [insert effect date of these regulations], including maintenance dredging of entrance channels and repair, replacement, or rehabilitation of breakwaters or jetties;

(v) Construction, repair, replacement, or rehabilitation of docks, seawalls, breakwaters, piers, or marinas with less than ten slips authorized by any valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(4) *Discharge or deposit of materials or other matter.* (i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except:

(A) Fish, fish parts, chumming materials, or bait used or produced incidental to and while conducting a traditional fishing activity in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by a marine sanitation device approved in accordance with Section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 et seq.;

(C) Water generated by routine vessel operations (e.g., deck wash down and graywater as defined in section 312 of the FWPCA), excluding oily wastes from bilge pumping; or

(D) Cooling water from vessels or engine exhaust;

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraph (a)(4)(i)(A) through (D) of this section and those authorized under Monroe County land use permits.

(5) *Operation of vessels.* (i) Operating a vessel in such a manner as to strike or otherwise injure coral, seagrass, or any other immobile organism attached to the seabed, including, but not limited to, operating a vessel in such a manner as to cause prop-scarring.

(ii) Having a vessel anchored on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen.

(iii) Except in officially marked channels, operating a vessel at a speed greater than 4 knots or in a manner which creates a wake:

(A) Within an area designated idle speed only/no wake;

(B) Within 100 yards of navigational aids indicating emergent or shallow reefs (international diamond warning symbol);

(C) Within 100 feet of the red and white ''divers down'' flag (or the blue and white ''alpha'' flag in Federal waters);

(D) Within 100 yards of residential shorelines; or

(E) Within 100 yards of stationary vessels.

(iv) Operating a vessel in such a manner as to injure or take wading, roosting, or nesting birds or marine mammals.

(v) Operating a vessel in a manner which endangers life, limb, marine resources, or property.

(6) *Conduct of diving/snorkeling without flag.* Diving or snorkeling without flying in a conspicuous manner the red and white ''divers down'' flag (or the blue and white ''alpha'' flag in Federal waters).

(7) *Release of exotic species.* Introducing or releasing an exotic species of plant, invertebrate, fish, amphibian, or mammals into the Sanctuary.

(8) *Damage or removal of markers.* Marking, defacing, or damaging in any way or displacing, removing, or tampering with any official signs, notices, or placards, whether temporary or permanent, or with any navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment.

(9) *Movement of, removal of, injury to, or possession of Sanctuary historical resources.* Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess, a Sanctuary historical resource.

(10) *Take or possession of protected wildlife.* Taking any marine mammal, sea turtle, or seabird in or above the Sanctuary, *except* as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 et seq., the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., and the Migratory Bird Treaty Act, as amended, (MBTA) 16 U.S.C. 703 et seq.

(11) *Possession or use of explosives or electrical charges.* Possessing, or using explosives, except powerheads, or releasing electrical charges within the Sanctuary.

(12) *Harvest or possession of marine life species.* Harvesting, possessing, or landing any marine life species, or part thereof, within the Sanctuary, except in accordance with rules 46–42.001 through 46–42.003, 46–42.0035, and 46–42.004 through 46–42.007, and 46.42.009 of the Florida Administrative Code, reproduced in Appendix VIII to this subpart, and such rules shall apply mutatis mutandis (with necessary editorial changes) to all Federal and State waters within the Sanctuary.

(13) *Interference with law enforcement.* Interfering with, obstructing, delaying or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Acts or any regulation or permit issued under the Acts.

(b) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a National Marine Sanctuary permit issued pursuant to § 922.166.

(c) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on the effective date of these regulations, or by any valid right of subsistence use or access in existence on the effective date of these regulations, provided that the holder of such authorization or right complies with § 922.167 and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as he or she deems reasonably necessary to achieve the purposes for which the Sanctuary was designated.

(d) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of these regulations, provided that the applicant complies with § 922.168, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of these regulations constitute authorizations issued after the effective date of these regulations.

(e)(1) All military activities shall be carried out in a manner that avoids to the maximum extent practical any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraph (a) of this section and § 922.164 do not apply to existing classes of military activities which were conducted prior to the effective date of these regulations, as identified in the Environmental Impact Statement and Management Plan for the Sanctuary. New military activities in the Sanctuary are allowed and may be exempted from the prohibitions in paragraph (a) of this section and in § 922.164 by the Director after consultation between the Director and the Department of Defense pursuant to section 304(d) of the NMSA. When a military activity is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource or quality in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA, or it is likely to destroy, cause the loss of, or injure a Sanctuary resource or quality not previously considered in a previous consultation under section 304(d) of the NMSA, the activity is considered a new activity for purposes of this paragraph. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practical any adverse impact on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting

from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to prevent, respond to or mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions contained in paragraph (a)(5) of this section do not apply to Federal, State and local officers while performing enforcement duties and/or responding to emergencies that threaten life, property, or the environment in their official capacity.

(g) Notwithstanding paragraph (b) of this section and paragraph (a) of § 922.168, in no event may the Director issue a permit under § 922.166 authorizing, or otherwise approve, the exploration for, leasing, development, or production of minerals or hydrocarbons within the Sanctuary, the disposal of dredged material within the Sanctuary other than in connection with beach renourishment or Sanctuary restoration projects, or the discharge of untreated or primary treated sewage (except by a certification, pursuant to § 922.167, of a valid authorization in existence on the effective date of these regulations), and any purported authorizations issued by other authorities after the effective date of these regulations for any of these activities within the Sanctuary shall be invalid.

§ 922.164 Additional activity regulations by Sanctuary area.

In addition to the prohibitions set forth in § 922.163, which apply throughout the Sanctuary, the following regulations apply with respect to activities conducted within the Sanctuary areas described in this section and in Appendix (II) through (VII) to this subpart. Activities located within two or more overlapping Sanctuary areas are concurrently subject to the regulations applicable to each overlapping area.

(a) *Areas To Be Avoided.* Operating a tank vessel or a vessel greater than 50 meters in registered length is prohibited in all areas to be avoided, except if such vessel is a public vessel and its operation is essential for national defense, law enforcement, or responses to emergencies that threaten life, property, or the environment. Appendix VII to this subpart sets forth the geographic coordinates of these areas.

(b) *Existing Management Areas.*—(1) *Key Largo and Looe Key Management Areas.* The following activities are prohibited within the Key Largo and Looe Key Management Areas (also known as the Key Largo and Looe Key National Marine Sanctuaries) described in Appendix II to this subpart:

(i) Removing, taking, damaging, harmfully disturbing, breaking, cutting, spearing or similarly injuring any coral or other marine invertebrate, or any plant, soil, rock, or other material, except commercial taking of spiny lobster and stone crab by trap and recreational taking of spiny lobster by hand or by hand gear which is consistent with these regulations and the applicable regulations implementing the applicable Fishery Management Plan.

(ii) Taking any tropical fish.

(iii) Fishing with wire fish traps, bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or nets.

(iv) Fishing with, carrying or possessing, except while passing through without interruption or for law enforcement purposes: pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring-loaded guns or similar devices known as spearguns.

(2) *Great White Heron and Key West National Wildlife Refuge Management Areas.* Operating a personal watercraft, operating an airboat, or water skiing except within Township 66 South, Range 29 East, Sections 5, 11, 12 and 14; Township 66 South, Range 28 East, Section 2; Township 67 South, Range 26 East, Sections 16 and 20, all Tallahassee Meridian, are prohibited within the marine portions of the Great White Heron and Key West National Wildlife Refuge Management Areas described in Appendix II to this subpart:

(c) *Wildlife Management Areas.* (1) Marine portions of the Wildlife Management Areas listed in Appendix III to this subpart or portions thereof may be designated ''idle speed only/no-wake,'' ''no-motor'' or ''no-access buffer'' zones or ''closed''. The Director, in cooperation with other Federal, State, or local resource management authorities, as appropriate, shall post signs conspicuously, using mounting posts, buoys, or other means according to location and purpose, at appropriate intervals and locations, clearly delineating an area as an ''idle speed only/no wake'', a ''no-motor'', or a ''no-access buffer'' zone or as ''closed'', and allowing instant, long-range recognition by boaters. Such signs shall display the official logo of the Sanctuary.

(2) The following activities are prohibited within the marine portions of the Wildlife Management Areas listed in Appendix III to this subpart:

(i) In those marine portions of any Wildlife Management Area designated an ''idle speed only/no wake'' zone in Appendix III to this subpart, operating a vessel at a speed greater that idle speed only/no wake.

(ii) In those marine portions of any Wildlife Management Area designated a ''no-motor'' zone in Appendix III to this subpart, using internal combustion motors or engines for any purposes. A vessel with an internal combustion motor or engine may access a ''no-motor'' zone only through the use of a push pole, paddle, sail, electric motor or similar means of propulsion.

(iii) In those marine portions of any Wildlife Management Area designated a ''no-access buffer'' zone in Appendix III of this subpart, entering the area by vessel.

(iv) In those marine portions of any Wildlife Management Area designated as closed in Appendix III to this subpart, entering or using the area.

(3) The Director shall coordinate with other Federal, State, or local resource management authorities, as appropriate, in the establishment and enforcement of access restrictions described in paragraph (c)(2) (i)–(iv) of this section in the marine portions of Wildlife Management Areas.

(4) The Director may modify the number and location of access restrictions described in paragraph (c)(2) (i)–(iv) of this section within the marine portions of a Wildlife Management Area if the Director finds that such action is reasonably necessary to minimize disturbances to Sanctuary wildlife, or to ensure protection and preservation of Sanctuary wildlife consistent with the purposes of the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. The Director will effect such modification by:

(i) Publishing in the Federal Register, after notice and an opportunity for public comments in accordance, an amendment to the list of such areas set forth in Appendix III to this subpart, and a notice regarding the time and place where maps depicting the precise locations of such restrictions will be made available for public inspection, and

(ii) Posting official signs delineating such restrictions in accordance with paragraph (c)(1) of this section.

(d) *Ecological Reserves and Sanctuary Preservation Areas.* (1) The following activities are prohibited within the Ecological Reserves described in Appendix IV to this subpart, and within the Sanctuary Preservation Areas, described in Appendix V to this subpart:

(i) Discharging or depositing any material or other matter except cooling water or engine exhaust.

(ii) Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities. However, fish, invertebrates, and marine plants may be possessed aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such resources can be shown not to have been harvested within, removed from, or taken within, the Ecological Reserve or Sanctuary Preservation Area, as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through such reserves or areas.

(iii) Except for catch and release fishing by trolling in the Conch Reef, Alligator Reef, Sombrero Reef, and Sand Key SPAs, fishing by any means. However, gear capable of harvesting fish may be aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such gear is not available for immediate use when entering and during transit through such Ecological Reserve or Sanctuary Preservation Area, and no presumption of fishing activity shall be drawn therefrom.

(iv) Touching living or dead coral, including but not limited to, standing on a living or dead coral formation.

(v) Placing any anchor in a way that allows the anchor or any portion of the anchor apparatus (including the anchor, chain or rope) to touch living or dead coral, or any attached organism. When anchoring dive boats, the first diver down must inspect the anchor to ensure that it is not touching living or dead coral, and will not shift in such a way as to touch such coral or other attached organisms. No further diving shall take place until the anchor is placed in accordance with these requirements.

(vi) Anchoring instead of mooring when a mooring buoy is available or anchoring in other than a designated anchoring area when such areas have been designated and are available.

(vii) Except for passage without interruption through the area, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of this section, violating a temporary access restriction imposed by the Director pursuant to paragraph (d)(2) of this section.

(2) The Director may temporarily restrict access to any portion of any Sanctuary Preservation Area or Ecological Reserve if the Director, on the basis of the best available data, information and studies, determines that a concentration of use appears to be causing or contributing to significant degradation of the living resources of the area and that such action is reasonably necessary to allow for recovery of the living resources of such area. The Director will provide for continuous monitoring of the area during the pendency of the restriction. The Director will provide public notice of the restriction by publishing a notice in the Federal Register, and by such other means as the Director may deem appropriate. The Director may only restrict access to an area for a period of 60 days, with one additional 60 day renewal. The Director may restrict access to an area for a longer period pursuant to a notice and opportunity for public comment rulemaking under the Administrative Procedure Act. Such restriction will be kept to the minimum amount of area necessary to achieve the purposes thereof.

(e) *Special-use Areas.* (1) The Director may set aside discrete areas of the Sanctuary as Special-use Areas, and, by designation pursuant to this paragraph, impose the access and use restrictions specified in paragraph (e)(3) of this section. Special-use Areas are described in Appendix VI to this subpart, in accordance with the following designations and corresponding objectives:

(i) ''Recovery area'' to provide for the recovery of Sanctuary resources from degradation or other injury attributable to human uses;

(ii) ''Restoration area'' to provide for restoration of degraded or otherwise injured Sanctuary resources;

(iii) ''Research-only area'' to provide for scientific research or education relating to protection and management, through the issuance of a Sanctuary General permit for research pursuant to § 922.166; and

(iv) ''Facilitated-use area'' to provide for the prevention of use or user conflicts or the facilitation of access and use, or to promote public use and understanding, of Sanctuary resources through the issuance of special-use permits.

(2) A Special-use Area shall be no larger than the size the Director deems reasonably necessary to accomplish the applicable objective.

(3) Persons conducting activities within any Special-use Area shall comply with the access and use restrictions specified in this paragraph and made applicable to such area by means of its designation as a ''recovery area,'' ''restoration area,'' ''research-only area,'' or ''facilitated-use area.'' Except for passage without interruption through the area or for law enforcement purposes, no person may enter a Special-use Area except to conduct or cause to be conducted the following activities:

(i) in such area designated as a ''recovery area'' or a ''restoration area'', habitat manipulation related to restoration of degraded or otherwise injured Sanctuary resources, or activities reasonably necessary to monitor recovery of degraded or otherwise injured Sanctuary resources;

(ii) in such area designated as a ''research only area'', scientific research or educational use specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a valid National Marine Sanctuary General or Historical Resources permit, or

(iii) in such area designated as a ''facilitated-use area'', activities specified by the Director or specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a valid Special-use permit.

(4)(i) The Director may modify the number of, location of, or designations applicable to, Special-use Areas by publishing in the Federal Register, after notice and an opportunity for public comment in accordance with the Administrative Procedure Act, an amendment to Appendix VI to this subpart, except that, with respect to such areas designated as a ''recovery area,'' ''restoration area,'' or ''research only area,'' the Director may modify the number of, location of, or designation applicable to, such areas by publishing a notice of such action in the Federal Register if the Director determines that immediate action is reasonably necessary to:

(A) Prevent significant injury to Sanctuary resources where circumstances create an imminent risk to such resources;

(B) Initiate restoration activity where a delay in time would significantly impair the ability of such restoration activity to succeed;

(C) Initiate research activity where an unforeseen natural event produces an opportunity for scientific research that may be lost if research is not initiated immediately.

(ii) If the Director determines that a notice of modification must be promulgated immediately in accordance with paragraph (e)(4)(i) of this section, the Director will, as part of the same notice, invite public comment and specify that comments will be received for 15 days after the effective date of the notice. As soon as practicable after the

end of the comment period, the Director will either rescind, modify or allow the modification to remain unchanged through notice in the Federal Register.

§ 922.165 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Any such temporary regulation may be in effect for up to 60 days, with one 60-day extension. Additional or extended action will require notice and comment rulemaking under the Administrative Procedure Act, notice in local newspapers, notice to Mariners, and press releases.

§ 922.166 Permits—application procedures and issuance criteria.

(a) National Marine Sanctuary General Permit.

(1) A person may conduct an activity prohibited by §§ 922.163 or 922.164, other than an activity involving the survey/inventory, research/recovery, or deaccession/transfer of Sanctuary historical resources, if such activity is specifically authorized by, and provided such activity is conducted in accordance with the scope, purpose, terms and conditions of, a National Marine Sanctuary General permit issued under this paragraph (a).

(2) The Director, at his or her discretion, may issue a General permit under this paragraph (a), subject to such terms and conditions as he or she deems appropriate, if the Director finds that the activity will:

(i) Further research or monitoring related to Sanctuary resources and qualities;

(ii) Further the educational value of the Sanctuary;

(iii) Further the natural or historical resource value of the Sanctuary;

(iv) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty;

(v) Assist in managing the Sanctuary; or

(vi) Otherwise further Sanctuary purposes, including facilitating multiple use of the Sanctuary, to the extent compatible with the primary objective of resource protection.

(3) The Director shall not issue a General permit under this paragraph (a), unless the Director also finds that:

(i) The applicant is professionally qualified to conduct and complete the proposed activity;

(ii) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(iii) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;

(iv) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to the activity's impacts on Sanctuary resources and qualities;

(v) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(vi) It is necessary to conduct the proposed activity within the Sanctuary to achieve its purposes; and

(vii) The reasonably expected end value of the activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse impacts on Sanctuary resources and qualities from the conduct of the activity.

(4) For activities proposed to be conducted within any of the areas described in § 922.164 (b)–(e), the Director shall not issue a permit unless he or she further finds that such activities will further and are consistent with the purposes for which such area was established, as described in §§ 922.162 and 922.164 and in the management plan for the Sanctuary.

(b) National Marine Sanctuary Survey/Inventory of Historical Resources Permit.

(1) A person may conduct an activity prohibited by §§ 922.163 or 922.164 involving the survey/inventory of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Survey/Inventory of Historical Resources permit issued under this paragraph (b). Such permit is not required if such survey/inventory activity does not involve any activity prohibited by §§ 922.163 or 922.164. Thus, survey/inventory activities that are non-intrusive, do not include any excavation, removal, or recovery of historical resources, and do not result in destruction of, loss of, or injury to Sanctuary resources or qualities do not require a permit. However, if a survey/inventory activity will involve test excavations or removal of artifacts or materials for evaluative purposes, a Survey/Inventory of Historical Resources permit is required. Regardless of whether a Survey/Inventory permit is required, a person may request such permit. Persons who have demonstrated their professional abilities under a Survey/Inventory permit will be given preference over other persons in consideration of the issuance of a Research/Recovery permit. While a Survey/Inventory permit does not grant any rights with regards to areas subject to pre-existing rights of access which are still valid, once a permit is issued for an area, other survey/inventory permits will not be issued for the same area during the period for which the permit is valid.

(2) The Director, at his or her discretion, may issue a Survey/Inventory permit under this paragraph (b), subject to such terms and conditions as he or she deems appropriate, if the Director finds that such activity:

(i) Satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) Either will be non-intrusive, not include any excavation, removal, or recovery of historical resources, and not result in destruction of, loss of, or injury to Sanctuary resources or qualities, or if intrusive, will involve no more than the minimum manual alteration of the seabed and/or the removal of artifacts or other material necessary for evaluative purposes and will cause no significant adverse impacts on Sanctuary resources or qualities; and

(iii) That such activity will be conducted in accordance with all requirements of the Programmatic Agreement for the Management of Submerged Cultural Resources in the Florida Keys National Marine Sanctuary among NOAA, the Advisory Council on Historic Preservation, and the State of Florida (hereinafter SCR Agreement), and that such permit issuance is in accordance with such SCR Agreement.

The SCR Agreement is reproduced in the ''Submerged Cultural Resources Action Plan'' set forth in Volume 1 of the Florida Keys National Marine Sanctuary Management Plan, dated 1996. Copies of the SCR Agreement may also be examined at, and obtained from, the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th floor, Silver Spring, MD 20910; or from the Florida Keys National Marine Sanctuary Office, P.O. Box 500368, Marathon, FL 33050.

(c) National Marine Sanctuary Research/Recovery of Sanctuary Historical Resources Permit.

(1) A person may conduct any activity prohibited by §§ 922.163 or 922.164 involving the research/recovery of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Research/Recovery of Historical Resources permit issued under this paragraph (c).

(2) The Director, at his or her discretion, may issue a Research/Recovery of Historical Resources permit, under this paragraph (c), and subject to such terms and conditions as he or she deems appropriate, if the Director finds that:

(i) Such activity satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) The recovery of the resource is in the public interest as described in the SCR Agreement;

(iii) Recovery of the resource is part of research to preserve historic information for public use; and

(iv) Recovery of the resource is necessary or appropriate to protect the resource, preserve historical information, and/or further the policies and purposes of the NMSA and the FKNMSPA, and that such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(d) National Marine Sanctuary Special-use Permit.

(1) A person may conduct any commercial or concession-type activity prohibited by §§ 922.163 or 922.164, if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Special-use permit issued under this paragraph (d). A Special-use permit is required for the deaccession/transfer of Sanctuary historical resources.

(2) The Director, at his or her discretion, may issue a Special-use permit in accordance with this paragraph (d), and subject to such terms and conditions as he or she deems appropriate and the mandatory terms and conditions of section 310 of the NMSA, if the Director finds that issuance of such permit is reasonably necessary to: establish conditions of access to and use of any Sanctuary resource; or promote public use and understanding of any Sanctuary resources. No permit may be issued unless the activity is compatible with the purposes for which the Sanctuary was designated and can be conducted in a manner that does not destroy, cause the loss of, or injure any Sanctuary resource, and if for the deaccession/transfer of Sanctuary Historical Resources, unless such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(3) The Director may assess and collect fees for the conduct of any activity authorized by a Special-use permit issued pursuant to this paragraph (d). No Special-use permit shall be effective until all assessed fees are paid, unless otherwise provided by the Director by a fee schedule set forth as a permit condition. In assessing a fee, the Director shall include:

(i) all costs incurred, or expected to be incurred, in reviewing and processing the permit application, including, but not limited to, costs for:

(A) Number of personnel;

(B) Personnel hours;

(C) Equipment;

(D) Biological assessments;

(E) Copying; and

(F) Overhead directly related to reviewing and processing the permit application;

(ii) all costs incurred, or expected to be incurred, as a direct result of the conduct of the activity for which the Special-use permit is being issued, including, but not limited to:

(A) The cost of monitoring the conduct both during the activity and after the activity is completed in order to assess the impacts to Sanctuary resources and qualities;

(B) The use of an official NOAA observer, including travel and expenses and personnel hours; and

(C) Overhead costs directly related to the permitted activity; and

(iii) an amount which represents the fair market value of the use of the Sanctuary resource and a reasonable return to the United States Government.

(4) Nothing in this paragraph (d) shall be considered to require a person to obtain a permit under this paragraph for the conduct of any fishing activities within the Sanctuary.

(e) Applications. (1) Applications for permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, PO Box 500368, Marathon, FL 33050. All applications must include:

(i) A detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed;

(ii) The qualifications and experience of all personnel;

(iii) The financial resources available to the applicant to conduct and complete the proposed activity;

(iv) A statement as to why it is necessary to conduct the activity within the Sanctuary;

(v) The potential impacts of the activity, if any, on Sanctuary resources and qualities;

(vi) The benefit to be derived from the activity; and

(vii) Such other information as the Director may request depending on the type of activity.

Copies of all other required licenses, permits, approvals, or other authorizations must be attached to the application.

(3) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems reasonably necessary to act on the application and may seek the views of any persons. The Director may require a site visit as part of the permit evaluation. Unless otherwise specified, the information requested must be received by the Director within 30 days of the postmark date of the request. Failure to provide such additional information on a timely basis may be deemed by the Director to constitute abandonment or withdrawal of the permit application.

(f) A permit may be issued for a period not exceeding five years. All permits will be reviewed annually to determine the permittee's compliance with permit scope, purpose, terms and conditions and progress toward reaching the stated goals and appropriate action taken under paragraph (g) of this section if warranted. A permittee may request permit renewal pursuant to the same procedures for applying for a new permit. Upon the permittee's request for renewal, the Director shall review all reports submitted by the permittee as required by the permit conditions. In order to renew the permit, the Director must find that the:

(1) Activity will continue to further the purposes for which the Sanctuary was designated in accordance with the criteria applicable to the initial issuance of the permit;

(2) permittee has at no time violated the permit, or these regulations; and

(3) the activity has not resulted in any unforeseen adverse impacts to Sanctuary resources or qualities.

(g) The Director may amend, suspend, or revoke a permit for good cause. The Director may deny a permit application, in whole or in part, if it is determined that the permittee or applicant has acted in violation of a previous permit, of these regulations, of the NMSA or FKNMSPA, or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by

certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(h) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in § 922.50.

(i) A permit issued pursuant to this section other than a Special-use permit is nontransferable. Special-use permits may be transferred, sold, or assigned with the written approval of the Director. The permittee shall provide the Director with written notice of any proposed transfer, sale, or assignment no less than 30 days prior to its proposed consummation. Transfers, sales, or assignments consummated in violation of this requirement shall be considered a material breach of the Special-use permit, and the permit shall be considered void as of the consummation of any such transfer, sale, or assignment.

(j) The permit or a copy thereof shall be maintained in legible condition on board all vessels or aircraft used in the conduct of the permitted activity and be displayed for inspection upon the request of any authorized officer.

(k) Any permit issued pursuant to this section shall be subject to the following terms and conditions:

(1) All permitted activities shall be conducted in a manner that does not destroy, cause the loss of, or injure Sanctuary resources or qualities, except to the extent that such may be specifically authorized.

(2) The permittee agrees to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

(3) All necessary Federal, State, and local permits from all agencies with jurisdiction over the proposed activities shall be secured before commencing field operations.

(l) In addition to the terms and conditions listed in paragraph (k) of this section, any permit authorizing the research/recovery of historical resources shall be subject to the following terms and conditions:

(1) a professional archaeologist shall be in charge of planning, field recovery operations, and research analysis.

(2) an agreement with a conservation laboratory shall be in place before field recovery operations are begun, and an approved nautical conservator shall be in charge of planning, conducting, and supervising the conservation of any artifacts and other materials recovered.

(3) a curation agreement with a museum or facility for curation, public access and periodic public display, and maintenance of the recovered historical resources shall be in place before commencing field operations (such agreement for the curation and display of recovered historical resources may provide for the release of public artifacts for deaccession/transfer if such deaccession/transfer is consistent with preservation, research, education, or other purposes of the designation and management of the Sanctuary. Deaccession/transfer of historical resources requires a Special-use permit issued pursuant to paragraph (d) of this section and such deaccession/transfer shall be executed in accordance with the requirements of the SCR Agreement).

(4) The site's archaeological information is fully documented, including measured drawings, site maps drawn to professional standards, and photographic records.

(m) In addition to the terms and conditions listed in paragraph (k) and (l) of this section, any permit issued pursuant to this section is subject to such other terms and conditions, including conditions governing access to, or use of, Sanctuary resources, as the Director deems reasonably necessary or appropriate and in furtherance of the purposes for which the Sanctuary is designated. Such terms and conditions may include, but are not limited to:

(1) Any data or information obtained under the permit shall be made available to the public.

(2) A NOAA official shall be allowed to observe any activity conducted under the permit.

(3) The permittee shall submit one or more reports on the status, progress, or results of any activity authorized by the permit.

(4) The permittee shall submit an annual report to the Director not later than December 31 of each year on activities conducted pursuant to the permit. The report shall describe all activities conducted under the permit and all revenues derived from such activities during the year and/or term of the permit.

(5) The permittee shall purchase and maintain general liability insurance or other acceptable security against potential claims for destruction, loss of, or injury to Sanctuary resources arising out of the permitted activities. The amount of insurance or security should be commensurate with an estimated value of the Sanctuary resources in the permitted area. A copy of the insurance policy or security instrument shall be submitted to the Director.

§ 922.167 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by §§ 922.163 or 922.164 if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on (insert the effective date of these regulations), or by any valid right of subsistence use or access in existence on (insert the effective date of these regulations), provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of (insert the effective date of these regulations), of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 922.167; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by § 922.163 or § 922.164 may conduct the activity without being in violation of applicable provisions of § 922.163 or § 922.164, pending final agency action on his or her certification request, provided the holder is in compliance with this § 922.167.

(c) Any holder of an authorization or right described in paragraph (a) above may request the Director to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited by § 922.163 or § 922.164, thus requiring certification under this section.

(d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director within 45 days of the postmark date of the request. The

Director may seek the views of any persons on the certification request.

(f) The Director may amend any certification made under this § 922.167 whenever additional information becomes available justifying such an amendment.

(g) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this § 922.167, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this § 922.167 may be extended by the Director for good cause.

(i) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.50.

(j) Any amendment, renewal, or extension made after (insert the effective date of these regulations), to a lease, permit, license, approval, other authorization or right is subject to the provisions of § 922.49.

Appendix I to Subpart P of Part 922—Florida Keys National Marine Sanctuary boundary coordinates

(Appendix based on North American Datum of 1983)

The boundary of the Florida Keys National Marine Sanctuary—

(a) begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 5 minutes west longitude, then runs eastward to the 300-foot isobath located at approximately 25 degrees 39 minutes north latitude, 80 degrees 4 minutes west longitude;

(b) then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 4 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 5 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 7 minutes west longitude;

(iv) 25 degrees 16 minutes north latitude, 80 degrees 8 minutes west longitude;

(c) then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 7 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 6 minutes west longitude,

(viii) 24 degrees 40 minutes north latitude, 83 degrees 6 minutes west longitude,

(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,

(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) after Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) then follows the southern boundary of Biscayne National Park to the southeastern most point of Biscayne National Park; and

(g) then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

Appendix II to Subpart P of Part 922—Existing Management Areas boundary coordinates

The Existing Management Areas are located within the following geographic boundary coordinates:

National Oceanic and Atmospheric Administration, Preexisting National Marine Sanctuaries:

Key Largo Management Area (Key Largo National Marine Sanctuary):

Point	Latitude	Longitude
1	25°19.45′N	80°12.00′W
2	25°16.02′N	80°08.07′W
3	25°07.05′N	80°12.05′W
4	24°58.03′N	80°19.08′W
5	25°02.02′N	80°25.25′W

Looe Key Management Area (Looe Key National Marine Sanctuary):

Point	Latitude	Longitude
1	24°31.62′N	81°26.00′W
2	24°33.57′N	81°26.00′W
3	24°34.15′N	81°23.00′W
4	24°32.20′N	81°23.00′W

United States Fish and Wildlife Service: Great White Heron National Wildlife Refuge (based on the North American Datum of 1983):

Point	Latitude	Longitude
1	24°43.8′N	81°48.6′W
2	24°43.8′N	81°37.2′W
3	24°49.2′N	81°37.2′W
4	24°49.2′N	81°19.8′W
5	24°48.0′N	81°19.8′W
6	24°48.0′N	81°14.4′W
7	24°49.2′N	81°14.4′W
8	24°49.2′N	81°08.4′W
9	24°43.8′N	81′08.4′W
10	24°43.8′N	81°14.4′W
11	24°43.2′N	81°14.4′W
12	24°43.2′N	81°16.2′W
13	24°42.6′N	81°16.2′W
14	24°42.6′N	81°21.0′W
15	24°41.4′N	81°21.0′W
16	24°41.4′N	81°22.2′W
17	24°43.2′N	81°22.2′W
18	24°43.2′N	81°22.8′W
19	24°43.8′N	81°22.8′W
20	24°43.8′N	81°24.0′W
21	24°43.2′N	81°24.0′W
22	24°43.2′N	81°26.4′W
23	24°43.8′N	81°26.4′W
24	24°43.8′N	81°27.0′W
25	24°43.2′N	81°27.0′W
26	24°43.2′N	81°29.4′W
27	24°42.6′N	81°29.4′W
28	24°42.6′N	81°30.6′W
29	24°41.4′N	81°30.6′W
30	24°41.4′N	81°31.2′W
31	24°40.8′N	81°31.2′W
32	24°40.8′N	81°32.4′W
33	24°41.4′N	81°32.4′W
34	24°41.4′N	81°34.2′W
35	24°40.8′N	81°34.2′W
36	24°48.0′N	81°35.4′W
37	24°39.6′N	81°35.4′W
38	24°39.6′N	81°36.0′W
39	24°39.0′N	81°36.0′W
40	24°39.0′N	81°37.2′W
41	24°37.8′N	81°37.2′W
42	24°37.8′N	81°37.8′W
43	24°37.2′N	81°37.8′W
44	24°37.2′N	81°40.2′W
45	24°36.0′N	81°40.2′W
46	24°36.0′N	81°40.8′W
47	24°35.4′N	81°40.8′W
48	24°35.4′N	81°42.0′W
49	24°36.0′N	81°42.0′W
50	24°36.0′N	81°48.6′W

Key West National Wildlife Refuge:

Point	Latitude	Longitude
1	24°40′N	81°49′W
2	24°40′N	82°10′W
3	24°27′N	82°10′W
4	24°27′N	81°49′W

When differential Global Positioning Systems data becomes available, these coordinates may be revised by Federal Register notice to reflect the increased accuracy of such data.

Appendix III to Subpart P of Part 922—Wildlife Management Areas access restrictions

Area and Access Restrictions

Bay Keys: No-motor zone (300 feet) around one key; idle speed only/no-wake zones in tidal creeks

Boca Grande Key: South one-half of beach closed (beach above mean high water closed by Department of Interior)

Woman Key: One-half of beach and sand spit on southeast side closed (beach and sand spit above mean high water closed by Department of Interior)

Cayo Agua Keys: Idle speed only/no-wake zones in all navigable tidal creeks
Cotton Key: No-motor zone on tidal flat
Snake Creek: No-motor zone on tidal flat
Cottrell Key: No-motor zone (300 feet) around entire key
Little Mullet Key: No-access buffer zone (300 feet) around entire key
Big Mullet Key: No-motor zone (300 feet) around entire key
Crocodile Lake: No-access buffer zone (100 feet) along shoreline between March 1 and October 1
East Harbor Key: No-access buffer zone (300 feet) around northernmost island
Lower Harbor Keys: Idle speed only/no-wake zones in selected tidal creeks
Eastern Lake Surprise: Idle speed only/no-wake zone east of highway U.S. 1
Horseshoe Key: No-access buffer zone (300 feet) around main island (main island closed by Department of Interior)
Marquesas Keys: (i) No-motor zones (300 feet) around three smallest keys on western side of chain; (ii) no-access buffer zone (300 feet) around one island at western side of chain; (iii) idle speed only/no-wake zone in southwest tidal creek
Tidal flat south of Marvin Key: No-access buffer zone on tidal flat
Mud Keys: (i) Idle speed only/no-wake zones in the two main tidal creeks; (ii) two smaller creeks on west side closed
Pelican Shoal: No-access buffer zone out to 50 meters from shore between April 1 and August 31 (shoal closed by the Florida Game and Freshwater Fish Commission)
Rodriguez Key: No-motor zone on tidal flats
Dove Key: No-motor zone on tidal flats; area around the two small islands closed
Tavernier Key: No-motor zone on tidal flats
Sawyer Keys: Tidal creeks on south side closed
Snipe Keys: (i) Idle speed only/no-wake zone in main tidal creek; (ii) no-motor zone in all other tidal creeks
Upper Harbor Key: No-access buffer zone (300 feet) around entire key
East Content Keys: Idle speed only/no-wake zones in tidal creeks between southwesternmost keys
West Content Keys: Idle speed only/no-wake zones in selected tidal creeks; no-access buffer zone in one cove
Little Crane Key: No-access buffer zone (300 feet) around entire key

Appendix IV to Subpart P of Part 922—Ecological Reserves boundary coordinates

One Ecological Reserve—the Western Sambos Ecological Reserve—is designated in the area of Western Sambos reef. NOAA has committed to designating a second Ecological Reserve within two years from issuance of this plan in the area of the Dry Tortugas. The establishment of a Dry Tortugas Ecological Reserve will be proposed by a notice of proposed rulemaking with a proposed boundary determined through a joint effort among the Sanctuary, and the National Park Service, pursuant to a public process involving a team consisting of managers, scientists, conservationists, and affected user groups.

The Western Sambos Ecological Reserve (based on North American Datum of 1983, aerial photos, charts, and Geographic Information Systems data) is located within the following geographic boundary coordinates:

WESTERN SAMBOS

Point	Latitude	Longitude
1	24°33.70′ N	81°40.80′ W
2	24°28.70′ N	81°41.90′ W
3	24°28.50′ N	81°43.70′ W
4	24°33.50′ N	81°43.10′ W

When differential Global Positioning Systems data becomes available, these coordinates may be revised by Federal Register notice to reflect the increased accuracy of such data.

Appendix V to Subpart P of Part 922—Sanctuary Preservation Areas Boundary Coordinates

The Sanctuary Preservation Areas (SPAs) (based on North American Datum of 1983, aerial photos, charts, and Geographic Information Systems data) are located within the following geographic boundary coordinates:

ALLIGATOR REEF

Point	Latitude	Longitude
1	24°50.8′ N	80°36.8′ W
2	24°50.4′ N	80°37.3′ W
3	24°50.7′ N	80°37.6′ W
4	24°51.1′ N	80°37.5′ W

Catch and release fishing by trolling only is allowed in this SPA.

CARYSFORT/SOUTH CARYSFORT REEF

Point	Latitude	Longitude
1	25°13.6′ N	80°12.2′ W
2	25°11.9′ N	80°12.8′ W
3	25°12.2′ N	80°13.8′ W
4	25°14.0′ N	80°12.7′ W

CHEECA ROCKS

Point	Latitude	Longitude
1	24°54.6′ N	80°37.6′ W
2	24°54.3′ N	80°37.5′ W
3	24°54.2′ N	80°37.7′ W
4	24°54.5′ N	80°37.8′ W

COFFINS PATCH

Point	Latitude	Longitude
1	24°41.5′ N	80°57.7′ W
2	24°41.1′ N	80°57.5′ W
3	24°40.6′ N	80°58.4′ W
4	24°41.1′ N	80°58.6′ W

CONCH REEF

Point	Latitude	Longitude
1	24°57.5′ N	80°27.4′ W
2	24°57.4′ N	80°27.3′ W
3	24°57.0′ N	80°27.7′ W
4	24°56.9′ N	80°27.6′ W

Catch and release fishing by trolling only is allowed in this SPA.

DAVIS REEF

Point	Latitude	Longitude
1	24°55.6′ N	80°30.3′ W
2	24°55.3′ N	80°30.0′ W
3	24°55.1′ N	80°30.4′ W
4	24°55.4′ N	80°30.7′ W

DRY ROCKS

Point	Latitude	Longitude
1	25°7.6′ N	80°17.9′ W
2	25°7.4′ N	80°17.7′ W
3	25°7.3′ N	80°17.8′ W
4	25°7.4′ N	80°18.1′ W

GRECIAN ROCKS

Point	Latitude	Longitude
1	25°6.9′ N	80°18.2′ W
2	25°6.6′ N	80°17.9′ W
3	25°6.1′ N	80°18.5′ W
4	25°6.2′ N	80°18.6′ W
5	25°6.8′ N	80°18.6′ W

EASTERN DRY ROCKS

Point	Latitude	Longitude
1	24°27.9′ N	81°50.5′ W
2	24°27.7′ N	81°50.4′ W
3	24°27.5′ N	81°50.6′ W
4	24°27.7′ N	81°50.8′ W

THE ELBOW

Point	Latitude	Longitude
1	25°9.1′ N	80°15.4′ W
2	25°8.9′ N	80°15.1′ W
3	25°8.1′ N	80°15.7′ W
4	25°8.8′ N	80°15.7′ W

FRENCH REEF

Point	Latitude	Longitude
1	25°2.2′ N	80°20.6′ W
2	25°1.8′ N	80°21.0′ W
3	25°2.3′ N	80°21.2′ W

HEN AND CHICKENS

Point	Latitude	Longitude
1	24°56.4′ N	80°32.9′ W
2	24°56.2′ N	80°32.7′ W
3	24°55.7′ N	80°33.1′ W
4	24°55.9′ N	80°33.3′ W

LOOE KEY

Point	Latitude	Longitude
1	24°33.2′ N	81°24.2′ W
2	24°32.6′ N	81°24.8′ W
3	24°32.5′ N	81°24.7′ W
4	24°33.1′ N	81°24.8′ W

MOLASSES REEF

1Point	Latitude	Longitude
1	25°0.9′ N	80°22.4′ W
2	25°0.7′ N	80°22.0′ W
3	25°0.2′ N	80°22.8′ W
4	25°0.7′ N	80°22.8′ W

NEWFOUND HARBOR KEY

Point	Latitude	Longitude
1	24°37.1′ N	81°23.3′ W
2	24°36.7′ N	81°23.8′ W
3	24°36.8′ N	81°23.3′ W
4	24°36.9′ N	81°23.9′ W

ROCK KEY

Point	Latitude	Longitude
1	24°27.5′ N	81°51.3′ W
2	24°27.3′ N	81°51.2′ W
3	24°27.2′ N	81°51.5′ W
4	24°27.5′ N	81°51.6′ W

SAND KEY

Point	Latitude	Longitude
1	24°27.6′ N	81°53.1′ W
2	24°27.0′ N	81°53.1′ W
3	24°27.0′ N	81°52.3′ W
4	24°27.6′ N	81°52.3′ W

Catch and release fishing by trolling only is allowed in this SPA.

SOMBRERO KEY

Point	Latitude	Longitude
1	24°37.9′ N	81°6.8′ W
2	24°37.4′ N	81°6.1′ W
3	24°37.2′ N	81°7.0′ W

Catch and release fishing by trolling only is allowed in this SPA.

When differential Global Positioning Systems data becomes available, the coordinates for all these areas may be revised by Federal Register notice to reflect the increased accuracy of such data.

Appendix VI to Subpart P of Part 922—Special-Use Areas Boundary Coordinates and Use Designations

The Special-use Areas (based on North American Datum of 1983) are located within the following geographic boundary coordinates:

CONCH REEF (RESEARCH ONLY)

Point	Latitude	Longitude
1	24°56.8′ N	80°27.2′ W
2	24°57.0′ N	80°27.0′ W
3	24°57.2′ N	80°27.5′ W
4	24°57.5′ N	80°27.4′ W

EASTERN SAMBOS (RESEARCH ONLY)

Point	Latitude	Longitude
1	24°29.4′ N	81°39.3′ W
2	24°29.7′ N	81°40.2′ W
3	24°29.5′ N	81°39.6′ W
4	24°29.8′ N	81°39.7′ W

LOOE KEY (RESEARCH ONLY)

Point	Latitude	Longitude
1	24°34.1′ N	81°23.3′ W
2	24°34.0′ N	81°23.2′ W
3	24°33.8′ N	81°23.8′ W
4	24°34.0′ N	81°23.9′ W

TENNESSEE REEF (RESEARCH ONLY)

Point	Latitude	Longitude
1	24°45.9′ N	80°45.6′ W
2	24°45.7′ N	80°45.4′ W
3	24°46.0′ N	80°44.9′ W
4	24°46.2′ N	80°45.1′ W

Appendix VII to Subpart P of Part 922—Areas To Be Avoided Boundary Coordinates

In the Vicinity of the Florida Keys

(Reference Charts: United States 11466, 27th Edition—September 1, 1990 and United States 11450, 4th Edition—August 11, 1990.)

Point	Latitude	Longitude
1	25°45.00′ N	80°06.10′ W
2	25°38.70′ N	80°02.70′ W
3	25°22.00′ N	80°03.00′ W
4	25°00.20′ N	80°13.40′ W
5	24°37.90′ N	80°47.30′ W
6	24°29.20′ N	81°17.30′ W
7	24°22.30′ N	81°43.17′ W
8	24°28.00′ N	81°43.17′ W
9	24°28.70′ N	81°43.50′ W
10	24°29.80′ N	81°43.17′ W
11	24°33.10′ N	81°35.15′ W
12	24°33.60′ N	81°26.00′ W
13	24°38.20′ N	81°07.00′ W
14	24°43.20′ N	80°53.20′ W
15	24°46.10′ N	80°46.15′ W
16	24°51.10′ N	80°37.10′ W
17	24°57.50′ N	80°27.50′ W
18	25°09.90′ N	80°16.20′ W
19	25°24.00′ N	80°09.10′ W
20	25°31.50′ N	80°07.00′ W
21	25°39.70′ N	80°06.85′ W
22	25°45.00′ N	80°06.10′ W

In the Vicinity of Key West Harbor

(Reference Chart: United States 11434, 21st Edition—August 11, 1990.)

Point	Latitude	Longitude
23	24°27.95′ N	81°48.65′ W
24	24°23.00′ N	81°53.50′ W
25	24°26.60′ N	81°58.50′ W
26	24°27.75′ N	81°55.70′ W
27	24°29.35′ N	81°53.40′ W
28	24°29.35′ N	81°50.00′ W
29	24°27.95′ N	81°48.65′ W

Area Surrounding the Marquesas Keys

(Reference Chart: United States 11434, 21st Edition—August 11, 1990.)

Point	Latitude	Longitude
30	24°26.60′ N	81°59.55′ W
31	24°23.00′ N	82°03.50′ W
32	24°23.60′ N	82°27.80′ W
33	24°34.50′ N	82°37.50′ W
34	24°43.00′ N	82°26.50′ W
35	24°38.31′ N	81°54.06′ W
36	24°37.91′ N	81°53.40′ W
37	24°36.15′ N	81°51.78′ W
38	24°34.40′ N	81°50.60′ W
39	24°33.44′ N	81°49.73′ W
40	24°31.20′ N	81°52.10′ W
41	24°28.70′ N	81°56.80′ W
42	24°26.60′ N	81°59.55′ W

Area Surrounding the Dry Tortugas Islands

(Reference Chart: United States 11434, 21st Edition—August 11, 1990.)

Point	Latitude	Longitude
43	24°32.00′ N	82°53.50′ W
44	24°32.00′ N	83°00.05′ W
45	24°39.70′ N	83°00.05′ W
46	24°45.60′ N	82°54.40′ W
47	24°45.60′ N	82°47.20′ W
48	24°42.80′ N	82°43.90′ W
49	24°39.50′ N	82°43.90′ W
50	24°35.60′ N	82°46.40′ W
51	24°32.00′ N	82°53.50′ W

Appendix VIII to Subpart P of Part 922—Marine Life Rule [as Excerpted From Chapter 46–42 of the Florida Administrative Code]

46–42.001 Purpose and Intent; Designation of Restricted Species; Definition of ''Marine Life Species.''

46–42.002 Definitions.

46–42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish.

46–42.0035 Live Landing and Live Well Requirements.

46–42.0036 Harvest in Biscayne National Park.*
46–42.004 Size Limits.
46–42.005 Bag Limits.
46–42.006 Commercial Season, Harvest Limits.
46–42.007 Gear Specifications and Prohibited Gear.
46–42.008 Live Rock.**
46–42.009 Prohibition on the Taking, Destruction, or Sale of Marine Corals and Sea Fans.

** Part 42.0036 was not reproduced because it does not apply to the Sanctuary.

** Part 42.008 was not reproduced because it is regulated pursuant to § 922.163(a)(2)(ii).

46–42.001 Purpose and Intent; Designation of Restricted Species; Definition of ''Marine Life Species''.

(1)(a) The purpose and intent of this chapter are to protect and conserve Florida's tropical marine life resources and assure the continuing health and abundance of these species. The further intent of this chapter is to assure that harvesters in this fishery use nonlethal methods of harvest and that the fish, invertebrates, and plants so harvested be maintained alive for the maximum possible conservation and economic benefits.

(b) It is the express intent of the Marine Fisheries Commission that landing of live rock propagated through aquaculture will be allowed pursuant to the provisions of this chapter.

(2) The following fish species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(a) Moray eels—Any species of the Family Muraenidae.

(b) Snake eels—Any species of the Genera Myrichthys and Myrophis of the Family Ophichthidae.

(c) Toadfish—Any species of the Family Batrachoididae.

(d) Frogfish—Any species of the Family Antennariidae.

(e) Batfish—Any species of the Family Ogcocephalidae.

(f) Clingfish—Any species of the Family Gobiesocidae.

(g) Trumpetfish—Any species of the Family Aulostomidae.

(h) Cornetfish—Any species of the Family Fistulariidae.

(i) Pipefish/seahorses—Any species of the Family Syngnathidae.

(j) Hamlet/seabass—Any species of the Family Serranidae, except groupers of the genera Epinephalus and Mycteroperca, and seabass of the genus Centropristis.

(k) Basslets—Any species of the Family Grammistidae.

(l) Cardinalfish—Any species of the Family Apogonidae.

(m) High-hat, Jackknife-fish, Spotted drum, Cubbyu—Any species of the genus Equetus of the Family Sciaenidae.

(n) Reef Croakers—Any of the species Odontocion dentex.

(o) Sweepers—Any species of the Family Pempheridідae.

(p) Butterflyfish—Any species of the Family Chaetodontidae.

(q) Angelfish—Any species of the Family Pomacanthidae.

(r) Damselfish—Any species of the Family Pomacentridae.

(s) Hawkfish—Any species of the Family Cirrhitidae.

(t) Wrasse/hogfish/razorfish—Any species of the Family Labridae, except hogfish, Lachnolaimus maximus.

(u) Parrotfish—Any species of the Family Scaridae.

(v) Jawfish—Any species of the Family Opistognathidae.

(w) Blennies—Any species of the Families Clinidae or Blenniidae.

(x) Sleepers—Any species of the Family Eleotrididae.

(y) Gobies—Any species of the Family Gobiidae.

(z) Tangs and surgeonfish—Any species of the Family Acanthuridae.

(aa) Filefish/triggerfish—Any species of the Family Balistes, except gray triggerfish, Balistidae capriscus.

(bb) Trunkfish/cowfish—Any species of the Family Ostraciidae.

(cc) Pufferfish/burrfish/balloonfish—Any of the following species:

1. Balloonfish—Diodon holocanthus.
2. Sharpnose puffer—Canthigaster rostrata.
3. Striped burrfish—Chilomycterus schoepfi.

(3) The following invertebrate species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(a) Sponges—Any species of the Class Demospongia, except sheepswool, yellow, grass, glove, finger, wire, reef, and velvet sponges, Order Dictyoceratida.

(b) Upside-down jellyfish—Any species of the Genus Cassiopeia.

(c) Siphonophores/hydroids—Any species of the Class Hydrozoa, except fire corals, Order Milleporina.

(d) Soft corals—Any species of the Subclass Octocorallia, except sea fans Gorgonia flabellum and Gorgonia ventalina.

(e) Sea anemones—Any species of the Orders Actinaria, Zoanthidea, Corallimorpharia, and Ceriantharia.

(f) Featherduster worms/calcareous tubeworms—Any species of the Families Sabellidae and Serpulidae.

(g) Star-shells—Any of the species Astraea americana or Astraea phoebia.

(h) Nudibranchs/sea slugs—Any species of the Subclass Opisthobranchia.

(i) Fileclams—Any species of the Genus Lima.

(j) Octopods—Any species of the Order Octopoda, except the common octopus, Octopodus vulgaris.

(k) Shrimp—Any of the following species:

1. Cleaner shrimp and peppermint shrimp—Any species of the Genera Periclimenes or Lysmata.
2. Coral shrimp—Any species of the Genus Stenopus.
3. Snapping shrimp—Any species of the Genus Alpheus.

(l) Crabs—Any of the following species:

1. Yellowline arrow crab—Stenorhynchus seticornis.
2. Furcate spider or decorator crab—Stenocionops furcata.
3. Thinstripe hermit crab—Clibanarius vittatus.
4. Polkadotted hermit crab—Phimochirus operculatus.
5. Spotted porcelain crab—Porcellana sayana.
6. Nimble spray or urchin crab—Percnon gibbesi.
7. False arrow crab—Metoporhaphis calcarata.

(m) Starfish—Any species of the Class Asteroidea, except the Bahama starfish, Oreaster reticulatus.

(n) Brittlestars—Any species of the Class Ophiuroidea.

(o) Sea urchins—Any species of the Class Echinoidea, except longspine urchin, Diadema antillarum, and sand dollars and sea biscuits, Order Clypeasteroida.

(p) Sea cucumbers—Any species of the Class Holothuroidea.

(q) Sea lillies—Any species of the Class Crinoidea.

(4) The following species of plants, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(a) Caulerpa—Any species of the Family Caulerpaceae.

(b) Halimeda/mermaid's fan/mermaid's shaving brush—Any species of the Family Halimedaceae.

(c) Coralline red algae—Any species of the Family Corallinaceae.

(5) For the purposes of Section 370.06(2)(d), Florida Statutes, the term ''marine life species'' is defined to mean those species designated as restricted species in subsections (2), (3), and (4) of this rule.

Specific Authority 370.01(20), 370.027(2), 370.06(2)(d), F.S. Law Implemented 370.01(20), 370.025, 370.027, 370.06(2)(d), F.S. History—New 1–1–91, Amended 7–1–92, 1–1–95.

46–42.002 Definitions.—As used in this rule chapter

(1) ''Barrier net,'' also known as a ''fence net,'' means a seine used beneath the surface of the water by a diver to enclose and concentrate tropical fish and which may be made of either nylon or monofilament.

(2) ''Drop net'' means a small, usually circular, net with weights attached along the outer edge and a single float in the center, used by a diver to enclose and concentrate tropical fish.

(3) ''Hand held net'' means a landing or dip net as defined in Rule 46–4.002(4), except that a portion of the bag may be constructed of clear plastic material, rather than mesh.

(4) ''Harvest'' means the catching or taking of a marine organism by any means whatsoever, followed by a reduction of such organism to possession. Marine organisms that are caught but immediately returned to the water free, alive, and unharmed are not harvested. In addition, temporary possession of a marine animal for the purpose of measuring it to determine compliance with the minimum or maximum size requirements of this chapter shall not constitute harvesting such animal, provided that it is measured

immediately after taking, and immediately returned to the water free, alive, and unharmed if undersize or oversize.

(5) ''Harvest for commercial purposes'' means the taking or harvesting of any tropical ornamental marine life species or tropical ornamental marine plant for purposes of sale or with intent to sell. The harvest of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limit shall constitute prima facie evidence of intent to sell.

(6) ''Land,'' when used in connection with the harvest of marine organisms, means the physical act of bringing the harvested organism ashore.

(7) ''Live rock'' means rock with living marine organisms attached to it.

(8) ''Octocoral'' means any erect, nonencrusting species of the Subclass Octocorallia, except the species Gorgonia flabellum and Gorgonia ventalina.

(9) ''Slurp gun'' means a self-contained, handheld device that captures tropical fish by rapidly drawing seawater containing such fish into a closed chamber.

(10) ''Total length'' means the length of a fish as measured from the tip of the snout to the tip of the tail.

(11) ''Trawl'' means a net in the form of an elongated bag with the mouth kept open by various means and fished by being towed or dragged on the bottom.

''Roller frame trawl'' means a trawl with all of the following features and specifications:

(a) A rectangular rigid frame to keep the mouth of the trawl open while being towed.

(b) The lower horizontal beam of the frame has rollers to allow the trawl to roll over the bottom and any obstructions while being towed.

(c) The trawl opening is shielded by a grid of vertical bars spaced no more than 3 inches apart.

(d) The trawl is towed by attaching a line or towing cable to a tongue located above or at the center of the upper horizontal beam of the frame.

(e) The trawl has no doors attached to keep the mouth of the trawl open.

(12) ''Tropical fish'' means any species included in subsection (2) of Rule 46–42.001, or any part thereof.

(13) ''Tropical ornamental marine life species'' means any species included in subsections (2) or (3) of Rule 46–42.001, or any part thereof.

(14) ''Tropical ornamental marine plant'' means any species included in subsection (4) of Rule 46–42.001.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1–1–91, Amended 7–1–92, 1–1–95.

46–42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish.—No person shall harvest, possess while in or on the waters of the state, or land any of the following species

(1) Longspine urchin, Diadema antillarum.

(2) Bahama starfish, Oreaster reticulatus.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1–1–91, Amended 7–1–92.

46–42.0035 Live Landing and Live Well Requirements

(1) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall land such marine organism alive.

(2) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall have aboard the vessel being used for such harvest a continuously circulating live well or aeration or oxygenation system of adequate size and capacity to maintain such harvested marine organisms in a healthy condition.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 7–1–92.

46–42.004 Size Limits

(1) Angelfishes.—

(a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any of the following species of angelfish, of total length less than that set forth below:

1. One-and-one-half (1½) inches for:

a. Gray angelfish (Pomacanthus arcuatus).

b. French angelfish (Pomacanthus paru).

2. One-and-three-quarters (1¾) inches for:

a. Blue angelfish (Holacanthus bermudensis).

b. Queen angelfish (Holacanthus ciliaris).

3. Two (2) inches for rock beauty (Holacanthus tricolor).

(b) No person shall harvest, possess while in or on the waters of the state, or land any angelfish (Family Pomacanthidae), of total length greater than that specified below:

1. Eight (8) inches for angelfish, except rock beauty (Holacanthus tricolor).

2. Five (5) inches for rock beauty.

(c) Except as provided herein, no person shall purchase, sell, or exchange any angelfish smaller than the limits specified in paragraph (a) or larger than the limits specified in paragraph (b). This prohibition shall not apply to angelfish legally harvested outside of state waters or federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, which angelfish are entering Florida in interstate or international commerce. The burden shall be upon any person possessing such angelfish for sale or exchange to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and any customs receipts, and to show that such angelfish originated from a point outside the waters of the State of Florida or federal Exclusive Economic Zone (EEZ) waters adjacent to Florida waters and entered the state in interstate or international commerce. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute prima facie evidence that such angelfish were harvested from Florida waters or adjacent EEZ waters for purposes of this paragraph.

(2) Butterflyfishes.—

(a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any butterflyfish (Family Chaetodontidae) of total length less than one (1) inch.

(b) No person shall harvest, possess while in or on the waters of the state, or land any butterflyfish of total length greater than 4 inches.

(3) Gobies—No person shall harvest, possess while in or on the waters of the state, or land any gobie (Family Gobiidae) of total length greater than 2 inches.

(4) Jawfishes—No person shall harvest, possess while in or on the waters of the state, or land any jawfish (Family Opistognathidae) of total length greater than 4 inches.

(5) Spotfin and Spanish hogfish —

(a) No person shall harvest, possess while in or on the waters of this state, or land any Spanish hogfish (Bodianus rufus) of total length less than 2 inches.

(b) No person shall harvest, possess while in or on the waters of this state, or land any Spanish hogfish (Bodianus rufus) or spotfin hogfish (Bodianus pulchellus) of total length greater than 8 inches.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1–1–91, Amended 7–1–92, 1–1–95.

46–42.005 Bag limit

(1) Except as provided in Rule 46–42.006 or subsections (3) or (4) of this rule (46–42.005) no person shall harvest, possess while in or on the waters of the state, or land more than 20 individuals per day of tropical ornamental marine life species, in any combination.

(2) Except as provided in Rule 46–42.006, no person shall harvest, possess while in or on the waters of the state, or land more than one (1) gallon per day of tropical ornamental marine plants, in any combination of species.

(3) Except as provided in Rule 46–42.006, no person shall harvest, possess while in or on the waters of the state, or land more than 5 angelfishes (Family Pomacanthidae) per day. Each angelfish shall be counted for purposes of the 20 individual bag limit specified in subsection (1) of this rule (46–42–005).

(4)(a) Unless the season is closed pursuant to paragraph (b), no person shall harvest, possess while in or on the waters of the state, or land more than 6 colonies per day of octocorals. Each colony of octocoral or part thereof shall be considered an individual of the species for purposes of subsection (1) of this rule (46–42–005) and shall be counted for purposes of the 20 individual bag limit specified therein. Each person harvesting any octocoral as authorized by this rule (46–42–005) may also harvest substrate within 1 inch of the perimeter of the holdfast at the base of the octocoral, provided that such substrate remains attached to the octocoral.

(b) If the harvest of octocorals in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters is closed to all harvesters prior to September 30 of any year, the season for harvest of octocorals in state waters shall also close until the following October 1, upon notice given by the Secretary of the Department of Environmental Protection, in the manner provided in s.120.52(16)(d), Florida Statutes.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1–1–91, Amended 1–1–95.

46–42.006 Commercial Season, Harvest Limits

(1) Except as provided in Rule 46–42.008(7), no person shall harvest, possess while in or on the waters of the state, or land quantities of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limits established in Rule 46–42.005 unless such person possesses a valid saltwater products license with both a marine life fishery endorsement and a restricted species endorsement issued by the Department of Environmental Protection.

(2) Persons harvesting tropical ornamental marine life species or tropical ornamental marine plants for commercial purposes shall have a season that begins on October 1 of each year and continues through September 30 of the following year. These persons shall not harvest, possess while in or on the waters of the state, or land tropical ornamental marine life species in excess of the following limits:

(a) A limit of 75 angelfish (Family Pomacanthidae) per person per day or 150 angelfish per vessel per day, whichever is less.

(b) A limit of 75 butterflyfishes (Family Chaetodontidae) per vessel per day.

(c) There shall be no limits on the harvest for commercial purposes of octocorals unless and until the season for all harvest of octocorals in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters is closed. At such time, the season for harvest of octocorals in state waters shall also close until the following October 1, upon notice given by the Secretary of the Department of Environmental Protection, in the manner provided in Section 120.52(16)(d), Florida Statutes. Each person harvesting any octocoral as authorized by this rule may also harvest substrate within 1 inch of the perimeter of the holdfast at the base of the octocoral, provided that such substrate remains attached to the octocoral.

(d) A limit of 400 giant Caribbean or ''pink-tipped'' anemones (Genus Condylactus) per vessel per day.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1–1–91, Amended 7–1–92, 1–1–95.

46–42.007 Gear Specifications and Prohibited Gear

(1) The following types of gear shall be the only types allowed for the harvest of any tropical fish, whether from state waters or from federal Exclusive Economic Zone (EEZ) waters adjacent to state waters:

(a) Hand held net.

(b) Barrier net, with a mesh size not exceeding ¾ inch stretched mesh.

(c) Drop net, with a mesh size not exceeding ¾ inch stretched mesh.

(d) Slurp gun.

(e) Quinaldine may be used for the harvest of tropical fish if the person using the chemical or possessing the chemical in or on the waters of the state meets each of the following conditions:

1. The person also possesses and maintains aboard any vessel used in the harvest of tropical fish with quinaldine a special activity license authorizing the use of quinaldine, issued by the Division of Marine Resources of the Department of Environmental Protection pursuant to Section 370.08(8), Florida Statutes.

2. The quinaldine possessed or applied while in or on the waters of the state is in a diluted form of no more than 2% concentration in solution with seawater. Prior to dilution in seawater, quinaldine shall only be mixed with isopropyl alcohol or ethanol.

(f) A roller frame trawl operated by a person possessing a valid live bait shrimping license issued by the Department of Environmental Protection pursuant to Section 370.15, Florida Statutes, if such tropical fish are taken as an incidental bycatch of shrimp lawfully harvested with such trawl.

(g) A trawl meeting the following specifications used to collect live specimens of the dwarf seahorse, Hippocampus zosterae, if towed by a vessel no greater than 15 feet in length at no greater than idle speed:

1. The trawl opening shall be no larger than 12 inches by 48 inches.

2. The trawl shall weigh no more than 5 pounds wet when weighed out of the water.

(2) This rule shall not be construed to prohibit the use of any bag or container used solely for storing collected specimens or the use of a single blunt rod in conjunction with any allowable gear, which rod meets each of the following specifications:

(a) The rod shall be made of nonferrous metal, fiberglass, or wood.

(b) The rod shall be no longer than 36 inches and have a diameter no greater than ¾ inch at any point.

(3) No person shall harvest in or from state waters any tropical fish by or with the use of any gear other than those types specified in subsection (1); provided, however, that tropical fish harvested as an incidental bycatch of other species lawfully harvested for commercial purposes with other types of gear shall not be deemed to be harvested in violation of this rule, if the quantity of tropical fish so harvested does not exceed the bag limits established in Rule 46–42.005.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1–1–91, Amended 7–1–92, 1–1–95.

46–42.009 Prohibition on the Taking, Destruction, or Sale of Marine Corals and Sea Fans; Exception; Repeal of Section 370.114, Florida Statutes

(1) Except as provided in subsection (2), no person shall take, attempt to take, or otherwise destroy, or sell, or attempt to sell, any sea fan of the species Gorgonia flabellum or of the species Gorgonia ventalina, or any hard or stony coral (Order Scleractinia) or any fire coral (Genus Millepora). No person shall possess any such fresh, uncleaned, or uncured sea fan, hard or stony coral, or fire coral.

(2) Subsection (1) shall not apply to:

(a) Any sea fan, hard or stony coral, or fire coral legally harvested outside of state waters or federal Exclusive Economic Zone (EEZ) waters adjacent to state waters and entering Florida in interstate or international commerce. The burden shall be upon any person possessing such species to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and any customs receipts, and to show that such species originated from a point outside the waters of the State of Florida or federal Exclusive Economic Zone (EEZ) adjacent to state waters and entered the state in interstate or international commerce. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute prima facie evidence that such species were harvested from Florida waters in violation of this rule.

(b) Any sea fan, hard or stony coral, or fire coral harvested and possessed pursuant to permit issued by the Department of Environmental Protection for scientific or educational purposes as authorized in Section 370.10(2), Florida Statutes.

(c) Any sea fan, hard or stony coral, or fire coral harvested and possessed pursuant to the aquacultured live rock provisions of Rule 46–42.008(3)(a) or pursuant to a Live Rock Aquaculture Permit issued by the National Marine Fisheries Service under 50 CFR Part 638 and meeting the following requirements:

1. Persons possessing these species in or on the waters of the state shall also possess a state submerged lands lease for live rock aquaculture and a Department of Environmental Protection permit for live rock culture deposition and removal or a federal Live Rock Aquaculture Permit. If the person possessing these species is not the person named in the documents required herein, then the person in such possession shall also possess written permission from the person so named to transport aquacultured live rock pursuant to this exception.

2. The nearest office of the Florida Marine Patrol shall be notified at least 24 hours in advance of any transport in or on state waters of aquacultured live rock pursuant to this exception.

3. Persons possessing these species off the water shall maintain and produce upon the request of any duly authorized law enforcement officer sufficient documentation to establish the chain of possession from harvest on a state submerged land lease for live rock aquaculture or in adjacent Exclusive Economic Zone (EEZ) waters pursuant to a federal Live Rock Aquaculture Permit.

4. Any sea fan, hard or stony coral, or fire coral harvested pursuant to Rule 46–42.008(3)(a) shall remain attached to the cultured rock.

Specific Authority 370.027(2), F.S.; Section 6, Chapter 83–134, Laws of Florida, as amended by Chapter 84–121, Laws of Florida. Law Implemented 370.025, 370.027, F.S.; Section 6, Chapter 83–134, Laws of Florida, as amended by Chapter 84–121, Laws of Florida. History—New 1–1–95.2222.

PARTS 929 AND 937—[REMOVED]

18. Under the authority of 16 U.S.C. 1431 *et seq.*, Parts 929 and 937 are removed.

[FR Doc. 97–1870 Filed 1–24–97; 10:59 am]

BILLING CODE 3510–12–P

federal register

Thursday
January 30, 1997

Part III

Environmental Protection Agency

Comfort/Status Letters Issuance Policy; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5681–1]

Policy on the Issuance of Comfort/Status Letters

I. Introduction

The Environmental Protection Agency (''EPA'' or ''Agency'') defines brownfields as abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. A party interested in brownfield property (''properties'' or ''sites'') is concerned primarily with whether or not the property has environmental contamination, and if it does, what are the potential associated liabilities and costs of cleaning up existing contamination. Equipped with this information, a party can make an informed decision regarding the purchase and/or development of the brownfield property.

EPA hopes to provide a measure of ''comfort'' by helping an interested party to better understand the potential for or actual EPA involvement at a brownfield property. This policy describes the most common situations about which parties inquire and the type of information or comfort EPA may provide to parties to assist them in assessing the probability of incurring liability under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''Superfund''). It is not EPA's intention to become involved in typical private real estate transactions. Rather, EPA intends to limit the use of such comfort to where it may facilitate the cleanup and redevelopment of brownfields, where there is the realistic perception or probability of incurring Superfund liability, and where there is no other mechanism available to adequately address the party's concerns. The policy contains four sample comfort/status letters which address the most common inquiries for information that EPA receives regarding contaminated or potentially contaminated properties.

II. Background

On January 25, 1995, EPA announced its Brownfields Action Agenda which outlined the Agency's activities and plans to encourage and facilitate the cleanup and reuse of brownfields. As part of this Agenda, the Office of Site Remediation Enforcement (''OSRE'') focused on the identification of barriers to cleanup and reuse posed by federal environmental liability. In particular, OSRE concentrated its efforts on the liability barriers posed by Superfund's requirements to identify, assess, and cleanup the nation's high priority hazardous waste sites.

Uncertainty about potential contamination and/or Superfund liability may prevent otherwise interested parties from purchasing or redeveloping brownfields. To allay the fear of potential federal pursuit of parties for cleanup of brownfields, EPA may provide varying degrees of comfort by communicating EPA's intentions toward a particular piece of property. Comfort may range from a formal legal agreement containing a covenant not to sue which releases a party from liability for cleanup of existing contamination to Agency policy statements regarding the exercise of EPA's enforcement discretion as it relates to specific site circumstances or activities of a party.

III. Policy Statement

This policy is designed primarily to assist parties who seek to cleanup and reuse brownfields. EPA headquarters and regional offices often receive requests from parties for some level of comfort that if they purchase, develop, or operate on brownfield property, EPA will not pursue them for the costs to clean up any contamination resulting from the previous use.[1] EPA believes that the majority of the concerns raised by these parties can be addressed through the dissemination of information known by EPA about a specific property and an explanation of what the information means to EPA. While the sample comfort/status letters do not account for every possible situation, EPA believes that the letters contained in this policy will address the most common requests for comfort. Facts and circumstances, however, will vary and information may be disseminated through different means including other written communication, public or individual meetings, or reference to public information repositories and EPA databases.

Comfort/status letters are provided solely for informational purposes and relate only to EPA's intent to exercise its response and enforcement authorities under Superfund at a property based upon the information presently known to EPA. EPA encourages the release of as much information as possible to enable the party to better understand the potential applicability of CERCLA to individual parcels of property and make informed decisions. For example, EPA may need to take Superfund action at the property if conditions at the property change, or if new information becomes available indicating that present conditions warrant a Superfund response. With the exception of sharing information already contained in EPA's files, the letters generally are not intended to express EPA's opinion as to possible contamination or extent of contamination at the property or provide any information on obligations associated with ownership or operation of the site. Additionally, the letters are not intended to limit or affect EPA's authority under CERCLA or any other law or provide a release from CERCLA liability.

Upon receiving a request from an interested party for information about their circumstances, regional offices may issue comfort/status letters, at their discretion, when there is a realistic perception or probability of incurring Superfund liability and such comfort will facilitate the cleanup and redevelopment of a brownfield property, and there is no other mechanism available to adequately address the party's concerns. EPA believes that these comfort/status letters are not necessary or appropriate for typical real estate transactions. With the information provided by EPA, the party inquiring about the property can decide whether the risk of EPA action is enough to forego involvement, whether to proceed as planned, whether additional investigation into site conditions is necessary, or whether further information from EPA or other agencies is needed. This policy is not intended to supersede EPA's ''Policy Against No Action Assurances.''[2] Because these letters do not provide assurance of no action, approval of the Assistant Administrator of the Office of Enforcement and Compliance Assurance is not required.

EPA has developed four sample comfort/status letters to address the most common inquiries received regarding brownfield properties. The letters are structured with opening and closing paragraphs applicable to all scenarios falling under that category of letter. Regions may then choose and combine the applicable substantive paragraphs to tailor the sample letter to address a party's particular request.

[1] The terms ''purchase'' and ''operate'' also may refer to lessees.

[2] The Agency's ''Policy Against No Action Assurances'' issued November 16, 1984, reaffirms EPA's policy against giving definitive assurances outside the context of a formal enforcement proceeding that EPA will not proceed with a particular enforcement response. Consistent with that policy, EPA may only provide site-specific, no action assurances with the approval of the Assistant Administrator of the Office of Enforcement and Compliance Assurance.

Directions also are found within the description of the letters and within the body of each letter. A brief summary of the sample letters is found below.

- 1) A ''No Previous Federal Superfund Interest Letter'' may be provided to parties when there is no historical evidence of federal Superfund program involvement with the property/site in question (i.e., site is not found in the CERCLA information system database, also known as the Comprehensive Environmental Response, Compensation, and Liability Information System or ''CERCLIS'');
- 2) A ''No Current Federal Superfund Interest Letter'' may be provided when the property/site either has been archived and is no longer part of the CERCLIS inventory of sites, has been deleted from the National Priorities List (''NPL''), or is situated near, but not within, the defined boundaries of a CERCLIS site;
- 3) A ''Federal Interest Letter'' may be provided at sites where EPA either plans to respond in some manner or already is responding at the site. This letter is intended to inform the recipient of the status of EPA's involvement at the property. Additionally, language is included to respond to requests regarding the applicability of Agency Superfund policy, regulation or CERCLA statutory provision to a party or particular set of circumstances; and,
- 4) A ''State Action Letter'' may be provided when the state has the lead for day-to-day activities and oversight of a response action (e.g., deferred sites.)

Sample letters are appended to this policy as Appendix A. The relationship between the sample letters is depicted in the table in Appendix B. Regions are encouraged to tailor the letters to fit region-specific protocols or site-specific conditions.

IV. Sample Comfort/Status Letters

- *No Previous Superfund Interest Letter*

This letter introduces and explains the purpose of CERCLIS and may be sent when the property described by the interested party is not located in active or archived CERCLIS records. The purpose of the letter is to inform the recipient that, to the best of EPA's knowledge, the property described in the request has never been addressed under EPA's Superfund program, nor are there current plans to do so. Regions, generally, should not interpret a request for a No Previous Superfund Interest Letter as notification that the site should be entered into CERCLIS.

Because EPA does not have any information about the property, the letter does not express any opinion as to possible contamination at the property or appropriate usage of the property. Additionally, EPA is not in a position to determine what obligations are associated with ownership or operation of the property under any present or future environmental or other federal, state or local statute, regulation or principle of common law. The interested party is encouraged to contact the appropriate state agency for further information regarding the state's intention toward the property. Regions are encouraged to check with other program offices to determine whether any enforcement action is planned or ongoing and, if so, coordinate within their region before deciding how and when to respond to the inquiry.

- *No Current Superfund Interest Letter*

The No Current Superfund Interest Letter is intended for properties a) that have been archived and removed from the CERCLIS inventory of Superfund sites; b) where either all or part of the NPL site has been deleted following EPA's deletion policies (''Deletion from the NPL'' 40 CFR 300.425(e) or ''Partial Deletion of Sites Listed on the National Priorities List'' published in the Federal Register on November 1, 1995, 60 FR 55466); or, c) situated in the vicinity of but currently not considered part of the CERCLIS site (e.g., is adjacent to the site). The purpose of the letter is to let the recipient know that EPA's Superfund program does not anticipate taking any/additional response action (which could include enforcement action if the Potentially Responsible Party (''PRP'') search and/or cost recovery has been completed), and the basis for its decision. The letter also refers the party to additional sources of information such as EPA's administrative record and the appropriate state agency.

The No Current Superfund Interest Letter is divided into three sections. Section I addresses archived properties and describes the conditions under which EPA archives a site, EPA's policy towards these sites, and the circumstances under which EPA would revisit an archived site. EPA archives a site when the site assessment event, removal event, or enforcement activity has been completed. EPA will archive a site if a) no contamination was found at the site; b) the site, while contaminated, neither met the criteria for inclusion on the NPL nor required any EPA response action; or, c) contamination was removed quickly without the need to place the site on the NPL; and d) EPA has completed its cost recovery action for the site. CERCLIS is updated to reflect the archiving of the property. Regions should select one of the appropriate reasons, as described here and in the sample letter, for the decision to archive the property and add it to the opening and closing paragraphs (see letter for additional instructions.) This section of the letter provides comfort by conveying that EPA's expectation, based upon current information, is not to take further steps to list the site on the NPL or to take any other CERCLA response action.

Section II of the letter focuses on sites deleted from the NPL and properties located in the vicinity of a CERCLIS site. Paragraphs (a) and (b) of Section II addresses inquiries regarding full or partial deletions of NPL sites and is appropriate if 1) the portion of the Superfund site is marked for deletion in CERCLIS and the state concurs with EPA's decision to delete the portion of the site or 2) after consultation with the state and a thirty day public comment period, the entire site is marked for deletion in CERCLIS. (Refer to the sample letter for specific directions). A site or portion of a site is deleted from the NPL when ''no further response is appropriate'' (see 40 CFR 300.425(e)). No further response is appropriate when responsible parties or EPA has completed all response actions, or when a remedial investigation shows ''no significant threat.'' Either EPA or a petition from any person may initiate the deletion process.

Paragraph (c) of Section II addresses a property that is in the vicinity of a CERCLIS site but currently is not affected by the release of hazardous substances (e.g., a site may be known as the Jones Industrial Park but the release affects only a portion of the industrial park property). Paragraph (c) is appropriate when EPA has sufficient information regarding the level and extent of contamination at a site to determine that the property is not part of the release. When a site is listed in CERCLIS, EPA generally delineates the release of hazardous substances as a geographical area and defines the site by reference to that area. Thus, the actual release is not limited to that property but either may extend beyond the property due to contaminant migration or may not occupy the full extent of the property.

Section III provides language when EPA has compiled an Administrative Record for the site. If the regional office has compiled an Administrative Record for the site, please add Section III to any of the above-mentioned scenarios.

Under the situations addressed in this letter, EPA is not in a position to provide any opinion on the appropriate use of the property or obligations

associated with ownership or operation of the property under any present or future environmental or other federal law or regulation or principle of common law. The letter recommends that the interested party to contact the appropriate state agency for further information regarding the state's intention toward the property. Before sending this letter, regions are encouraged to check with other program offices to determine whether any enforcement action is planned or ongoing and, if so, coordinate with the appropriate regional program offices before deciding how and when to respond to the inquiry.

• *Federal Superfund Interest Letter*

When a site is in the Superfund evaluation or response phase, the most important assistance EPA can provide an interested party may be information about current Superfund activities. When the site is found in CERCLIS site inventory, a regional office may issue a Federal Interest Letter to explain what actions have been taken by EPA toward the remediation of a particular site (e.g., site sampling, removal action). The letter also may indicate whether EPA anticipates further action at a site and the type of action anticipated. In addition to the opening paragraph, there are four parts to the Federal Interest Letter. Section I of the letter provides the recipient with the status of the property—whether the property is or may be part of CERCLIS/NPL site. Section II describes EPA's planned or ongoing activities (e.g., preliminary assessment, removal, or remedial design). Federal Interest Letters may be considered for sites in the CERCLIS site inventory, including those on the NPL or eligible for the NPL, sites undergoing a federal EPA removal action, undergoing federal EPA remedial action, or where EPA has incurred or will incur response costs.

Section III of the Federal Interest Letter provides language regarding the application of an EPA Superfund policy, CERCLA statutory provision or regulation to a party's particular set of circumstances. As stated in the policy and of particular importance to Section III of the Federal Interest Letter is the limitation on issuing comfort/status letters to situations where the requesting party provides information showing that 1) a project found to be in the public interest (e.g., an economic redevelopment project) is hindered or the value of a property is affected by the potential for Superfund liability, and 2) there is no other mechanism available to adequately address the party's concerns other than a letter from EPA with a statement regarding the applicability of a specific Superfund policy, statutory provision or regulation. These criteria should be met before a region considers sending the party a Federal Interest Letter. In response to such requests, regions should evaluate the information provided and respond, as appropriate, with Section III of the Federal Interest Letter attaching a copy of the relevant policy or statutory/regulatory language to the letter.

Section IV provides language for the closing paragraph appropriate for all sections of the letter. This section of the letter also encourages the region to include pertinent fact sheets (or any other relevant information) and refers the party to the administrative record repository.

• *State Action Letter*

The State Action Letter is intended to provide comfort at sites where EPA may have either no current Superfund involvement or a secondary role under the state's (or territory, commonwealth or tribe) lead of site activities. A state may participate in such activities as lead agency through a cooperative agreement (''CA'') between the state and region. A state and region also may develop a Memorandum of Agreement (''MOA'') in which the region and the state articulate the roles each will have regarding the cleanup of contaminated properties.

The State Action Letter seeks to advise parties that EPA does not intend to take federal action under CERCLA when the state has the primary role of overseeing cleanups pursuant to either state or federal requirements and, where appropriate, the parties performing the cleanup are working cooperatively under state direction. EPA, however, may consider taking action at a site if it receives new information about site conditions requiring federal action or the responding party and the state are unwilling or unable to ensure compliance with the negotiated agreement between the state and responding party or the state and EPA.

Regions may respond with a State Action Letter to two different types of inquiries. The first type of inquiry may be from a state requesting that EPA send a State Action Letter regarding a particular site. Whenever possible and appropriate, regions should seek to provide a letter responsive to the state's request. The second type of inquiry may be from an outside party. The region should prepare a State Action Letter for that party in consultation with the state, if appropriate.

The State Action Letter is appropriate to send to parties in the following situations: (a) the site is designated ''state-lead'' in CERCLIS; (b) the site is designated ''deferred to state'' in CERCLIS (see ''Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions,'' OSWER Dir. 9375.6–11, May 3, 1995); (c) the site was designated ''deferred to state'' and is subsequently designated ''archived'' in CERCLIS; or, (d) the site is listed in CERCLIS and is being addressed under a state voluntary cleanup program (''VCP'') pursuant to an approved MOA between the region and state. For sites not listed in CERCLIS, but that are located in a state that has entered into a VCP MOA with the region (and the region believes that the site is being addressed pursuant to the state's VCP), the region should issue a No Previous Federal Interest Letter.

IV. Use of this Policy

This policy is not a rule, and does not create any legal obligations. The extent to which EPA applies the policy will depend on the facts of each case. For further information concerning this policy or sample letters, please contact Elisabeth Freed at (202) 564–5117 or Lori Boughton at (202) 564–5106 in the Office of Site Remediation Enforcement.

Dated: January 23, 1997.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

Appendix A—Sample No Previous Superfund Interest Letter

Addressee

Re: [Insert name or description of property/site]

Dear [Insert name of party]: I am writing in response to your letter dated —/—/— concerning the property referenced above. My response is based upon the facts presently known to the U.S. Environmental Protection Agency (''EPA'') and is provided solely for informational purposes.

The federal Superfund Program, established to cleanup hazardous waste sites, is administered by EPA in cooperation with individual states and local and tribal governments. Sites are discovered by citizens, businesses, and local, state or federal agencies. When a potential hazardous waste site is reported, EPA records the available information in its database, the Comprehensive Environmental Response, Compensation, and Liability Information System (''CERCLIS'). [Note: if a region practices pre-CERCLIS screening procedures, please include language indicating that the procedures exists, whether or not the property is in the process of being ''pre-screened'', and what this means to the inquirer. Adjustments may be needed to the

sample language contained in this letter.] The fact that a site is listed in CERCLIS, however, does not mean that an EPA response action will occur at the site or that ownership or operation of the site is restricted or may be associated with liability. The fact that a property is not listed in CERCLIS does mean that EPA is not currently planning to take any action under the federal Superfund program to evaluate the site for inclusion on the National Priorities List (NPL) or to conduct removal or remediation activities.

The above-referenced property was not identified in a search of the active and archived records in the CERCLIS database. Please note that its absence from CERCLIS does not represent a finding that there are no environmental conditions at this property that require action or that are being addressed under another federal or state program. The absence of the property from CERCLIS means that, at this time, EPA is not aware of any information indicating that there has been a release or threat of release of hazardous substances at or from the facility that needs to be assessed by the federal Superfund program and that no such assessment has been performed by EPA in the past. I encourage you to contact [insert name of state or local agency] to determine if they have information regarding the property and its environmental condition. [Regions also are encouraged to check with other program offices to determine whether EPA is addressing this site under another statute such as RCRA].

If you would like more comprehensive information on current or historical CERCLIS data or to request an additional search, please contact the National Technical Information Service (''NTIS'), a publishing clearinghouse for government information. The address is: U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (telephone: (703) 487–4650; fax: (703) 321–8547.) CERCLIS information is also available on the Internet at http://www.epa.gov/superfund/index.html#Products. Should you have any further questions about Superfund, please feel free to contact me at [insert phone number/address.]

Sincerely,

Regional Contact

cc: State contact

Sample No Current Superfund Interest Letter

Addressee

Re: [Insert name or description of property]

Dear [Insert name of party]: I am writing in response to your letter dated —/—/— concerning the property referenced above. My response is based upon the facts presently known to the United States Environmental Protection Agency (''EPA'') and is provided solely for informational purposes. For the reasons stated below, EPA does not presently contemplate additional Superfund action for this property.

In response to growing concern over health and environmental risks posed by hazardous waste sites, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), establishing the Superfund program to clean up these sites. The Superfund program is implemented by EPA in cooperation with individual states and local and tribal governments. Sites are discovered by citizens, businesses, and local, state, or federal agencies. After a potential hazardous waste site is reported to EPA, the available information is recorded in the Comprehensive Environmental Response and Liability Information System (''CERCLIS''), EPA's data management system for Superfund. Sites are added to CERCLIS when EPA believes that there may be contamination that warrants action under Superfund.

I. [FOR ARCHIVED SITES]

If , after an initial investigation, EPA determines that the contamination does not warrant Superfund action, or if an appropriate Superfund response action has been completed, EPA will archive that site from CERCLIS. This means that EPA believes no further federal response is appropriate. Archived sites may be returned to the CERCLIS site inventory if new information necessitating further Superfund consideration is discovered.

EPA has archived the above-referenced property from the CERCLIS site inventory because [choose one of the following (a, b, or c) to complete the sentence]

[a.] , following site evaluation activities, EPA determined that either no contamination was found or conditions at the property did not warrant further federal Superfund involvement.

[b.] a federal removal action was completed and no further Superfund action is planned for this property.

[c.] environmental conditions at the property are subject to requirements of [RCRA, UST, OPA, etc.], however, no further interest under the federal Superfund program is warranted. For further information concerning these requirements, please contact [name and telephone number]. [Add to previous sentence] EPA, therefore, anticipates no need to take additional Superfund enforcement, investigatory, cost recovery, or cleanup action at this archived site unless new information warranting further Superfund consideration or conditions not previously known to EPA regarding the site are discovered. EPA will maintain a dialogue with the states and will continue to refer archived sites to the states for their review and consideration. You may want to contact [insert state contact, address and telephone number] for further information.

II. [FOR PARTIAL OR FULL DELETIONS FROM NPL OR FOR A SITE BOUNDARY SITUATION]

CERCLIS does not describe sites in precise geographical terms primarily because the boundaries of the contamination and available information on those boundaries can be expected to change over time. Once enough information regarding the nature and extent of the release of the hazardous substances is gathered, EPA can more accurately delineate the boundaries of a site. [Choose either (a), (b) or (c)].

(a) [If the property was included in a partial deletion from the NPL]

The above-referenced property [is/appears to be] situated within the [name of NPL site] which is included on EPA's list of high priority hazardous waste CERCLIS sites known as the National Priorities List (''NPL''). EPA, however, has determined that no further investigatory or cleanup action is appropriate at the property under the federal Superfund program. With the [insert State Agency] concurrence, EPA has decided to delete the portion of the NPL site which contains the above-referenced property in accordance with the Agency's ''Procedures for Partial Deletions at NPL Sites'' (OERR Directive Number 9320.2–11, August 30, 1996).

(b) [If the property is contained within the NPL site or is defined as the NPL site and the site has been deleted from the NPL]

The identified property [is/appears to be] [select one: situated within the defined geographical borders of the [name of NPL site] or defined as the [name of the NPL site]] which is included on EPA's list of high priority hazardous waste CERCLIS sites known as the National Priorities List (''NPL''). EPA, however, has determined that no further investigatory or cleanup action is appropriate at the property. In consultation with the [insert State Agency], EPA has decided to delete this property from the NPL in accordance with ''Deletion from the NPL'' 40CFR 300.425(e).

(c) [If the property is not part of the CERCLIS site but is nearby]

The above-referenced property is located [near or adjacent to] the [name of CERCLIS Site]. At this time, [statement as to the status of the site at present time: e.g., preliminary assessment, site investigation, removal, remedial investigation or feasibility study is underway or is completed]. Based upon available information, the property is not presently considered by EPA to be a part of the [name of the CERCLIS site].

[Add to end of paragraph (a), (b), or (c)]

EPA, therefore, anticipates no need to take [any/additional] [Superfund enforcement—include if PRP search and cost recovery are complete] investigatory or cleanup action at this property unless new information warranting further Superfund consideration or conditions not previously known to EPA regarding the property are discovered. You may want to contact [insert state agency information] for further information. [If appropriate, enclose a copy of the fact sheet on the CERCLIS site].

III. [IF ADMINISTRATIVE RECORD HAS BEEN COMPILED]

EPA has compiled an administrative record for the [name of CERCLIS or NPL Site] which provides information on the nature and extent of the contamination found at the site. This record is available at EPA Region—and at [location nearby to the site].

If you have any additional questions, or wish to discuss this information, please feel free to contact [insert EPA contact and address].

Sincerely yours,

Regional Contact

cc: State contact

Sample Federal Superfund Interest Letter

Addressee

Re: [insert name or description of property/site]

Dear [Insert name of party]: I am writing in response to your letter dated —/—/— concerning the property referenced above. My response is based upon the facts presently known to the United States Environmental Protection Agency (''EPA'') and is provided solely for informational purposes.

In response to growing concern over health and environmental risks posed by hazardous waste sites, Congress passed the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'') and established the Superfund program to clean up these sites. The Superfund program is implemented by EPA in cooperation with individual states and local and tribal governments. Sites are discovered by citizens, businesses, and local, state and federal agencies. After a potential hazardous waste site is reported to EPA, the site-specific information is recorded in the Superfund database, the Comprehensive Environmental Response and Liability Information System (''CERCLIS'). Sites are added to CERCLIS when EPA believes that there may be contamination that warrants action under Superfund.

EPA initially screens a potential hazardous waste site to determine what type of action, if any, is necessary. The Superfund program may then perform a preliminary assessment and site investigation to determine whether contamination at a property is likely to require a federal cleanup response, an evaluation to determine if a short term response action to eliminate or reduce contamination is needed, and add the site to EPA's list of high priority hazardous waste sites known as the National Priorities List (''NPL').

EPA is examining [and/or addressing] the property referenced above in connection with the [insert name of CERCLIS/NPL site] under the authority of CERCLA. [Insert appropriate paragraphs from Sections I and/or II below. Use III for requests regarding the applicability of a specific policy. Section IV represents the closing paragraph for all the Federal Superfund Interest letters].

I. STATUS OF THE IDENTIFIED PROPERTY:

a. The above-referenced property is presently part of [or is] the [insert name of site.] [Add paragraph from Section II for further information concerning the site.]

b. The above-referenced property may be part of the [insert name of site.] [Add paragraph from Section II for further information concerning the site.]

II. STATUS OF EPA ACTIVITIES

a. The site has been placed in the Comprehensive Environmental Response, Compensation and Liability Information System (''CERCLIS'') site inventory, but no studies or investigations have been performed to date. Accordingly, EPA has not developed sufficient information relating to the nature and extent of contamination to presently determine whether further federal action is appropriate under Superfund. Additionally, EPA has not yet determined which properties may be considered part of the site.

b. A Superfund site evaluation is planned at the [insert name of site] to investigate possible contamination, and where it may be located. Accordingly, EPA has not yet determined which properties may be considered part of the [insert name of site.] [Add description of site evaluation activity or attach relevant documents, if available.]

c. A Superfund site evaluation activity is underway at the [insert name of site] to investigate possible contamination, and where it may be located. Accordingly, EPA has not yet determined which properties may be considered part of the [insert name of site.] [Add description of site evaluation activity or attach relevant documents, if available.]

d. The [insert name of site] has been proposed to [or placed on] the Superfund National Priorities List (''NPL''). [Refer to and/or attach Federal Register notice.] The description of [insert name of site] contains EPA's preliminary evaluation of which properties are affected, although the actual borders of the Superfund site could change based on further information regarding the extent of contamination and appropriate remedy.

e. A Superfund Remedial Investigation/Feasibility Study (''RI/FS'') is planned at [insert name of site.] [Add description of RI/FS and ensuing activities or attach relevant documents, if available].

f. A Superfund Remedial Investigation/Feasibility Study (''RI/FS'') is underway at [insert name of site.] [Add description of RI/FS and ensuing activities or attach relevant documents, if available].

g. A Superfund Remedial Investigation/Feasibility Study (''RI/FS'') has been completed at [insert name of site.] [Add description of RI/FS and ensuing activities or attach relevant documents, if available].

h. EPA is planning a Superfund Remedial Design/Remedial Action (''RD/RA'') at [insert name of site.] [Insert pertinent information such as a description of the ROD and RD/RA, such as date of issuance of the ROD, schedule for cleanup; Fund lead or PRP implementation, cleanup progress to date; a schedule for future cleanup, especially a final completion date, cleanup levels to be achieved, and anticipated future land use of the Site, or attach relevant informational documents].

i. EPA has commenced a Superfund Remedial Design/Remedial Action (''RD/RA'') at [insert name of site.] [Insert pertinent information such as a description of the ROD and RD/RA, such as date of issuance of the ROD, schedule for cleanup; Fund lead or PRP implementation, cleanup progress to date; a schedule for future cleanup, especially a final completion date, cleanup levels to be achieved, and anticipated future land use of the Site, or attach relevant informational documents].

j. Superfund Remedial Design/Remedial Action (''RD/RA'') has been completed at insert name of site.] [If possible provide information on cleanup achievements, whether it was PRP or Fund-lead, etc., or attach relevant informational documents, if available] A Five-year Review will [will not] be necessary at [insert name of site.] [Also, describe status with respect to deletion from the NPL.]

k. A removal action is planned at [insert name of site.] [provide information on cleanup achievements, whether it was PRP or Fund-lead, and contact number for On-Scene Coordinator, cost recovery staff, or ORC attorney, or attach relevant informational documents, if available.]

l. A removal action is ongoing at [insert name of site.] [provide information on cleanup achievements, whether it was PRP or Fund-lead, and contact number for On-Scene Coordinator, cost recovery staff, or ORC attorney, or attach relevant informational documents, if available.]

m. A removal action has been completed at [insert name of site.] [provide information on cleanup achievements, whether it was PRP or Fund-lead, and contact number for On-Scene Coordinator, cost recovery staff, or ORC attorney, or attach relevant informational documents, if available.]

III. FOR PARTIES OR SITES COVERED BY AN EPA POLICY/STATUTE/REGULATION

Dear [Insert name of party]: I am writing in response to your letter dated —/—/— concerning the property referenced above. My response is based upon the facts presently known to the United States Environmental Protection Agency (''EPA').

As you may know, the above-referenced property is located within or near the [insert name of CERCLIS site.] EPA is currently taking [insert description of any action that EPA is taking or plans to take and any contamination problem.]

[Choose either paragraph [a] or [b]]:

[a. For situations when a party provides information showing that 1) a project found to be in the public interest is hindered or the value of a property is affected by the potential for Superfund liability, and 2) there is no other mechanism available to adequately address the party's concerns]

The [insert policy citation/statutory/regulatory provision], provides that EPA, in an exercise of its enforcement discretion, will not take an enforcement action against parties who meet the conditions and criteria described in the [insert policy/statute/regulation]. Based upon the information currently available to EPA, EPA believes that the [policy/statutory/regulatory provision] applies to [you/your] situation. I am enclosing a copy of the [policy/statutory or regulatory provision and fact sheet, if appropriate] for your review.

[b. For situations when a party does not provide information showing that 1) a project found to be in the public interest is hindered or the value of a property is affected by the potential for Superfund liability, and 2) there is no other mechanism available to adequately address the party's concerns,

attach the appropriate policy/statutory or regulatory language and insert the following language]:

The [insert policy citation/statutory/regulatory provision], provides that EPA, in an exercise of its enforcement discretion, will not take an enforcement action against parties who meet the conditions and criteria described in the [insert policy/statute/regulation]. [EPA currently does not have enough information available to determine whether the [insert policy/statutory/regulatory citation] applies to your situation OR EPA, based upon the current information available, believes that you/your circumstances do not meet the criteria/provisions of the [policy/statute/regulation]. I, however, have enclosed a copy of the [policy/statutory or regulatory language] for your own review and determination of its applicability to you [or your situation].

IV. CLOSING PARAGRAPH

EPA hopes that the above information is useful to you. [Optional—In addition, we have included a copy of our latest fact sheet for the (insert name of site.)] Further, we direct your attention to the [insert location of site local records repository] at which EPA has placed a copy of the Administrative Record for this site. [Include for section C letters only: This letter is provided solely for informational purposes and does not provide a release from CERCLA liability.] If you have any questions, or wish to discuss this letter, please feel free to contact [insert EPA contact and address].

Sincerely,

Regional Contact

Enclosure

Sample State Action Letter

Addressee

Re: [Insert name or description of site/property]

Dear [Insert name of party]: I am writing in response to your letter dated —/—/— concerning the property referenced above. My response is based upon the facts presently known to the United States Environmental Protection Agency (''EPA'') and is provided solely for informational purposes.

The problem of investigating, responding to, and cleaning property contaminated by hazardous substances is a complex one. In an effort to maximize resources and ensure timely responses, EPA and the states work together in responding to properties posing threats of environmental contamination. Although the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'', also known as ''Superfund'') is a federal law that establishes a federal program, the law also envisions and provides for state involvement at sites handled under the Superfund program. CERCLA explicitly describes scenarios under which a state may have a significant and prominent role in site activities.

I. [INSERT THIS SECTION FOR SITES DESIGNATED STATE-LEAD IN CERCLIS]

The site about which you have inquired, [site name], is a site that falls under the federal Superfund program, but has been designated a state-lead. A state-lead designation means that although the site remains in EPA's inventory of sites and may be on EPA's list of highest priority sites, the National Priorities List (''NPL''), implementing responsibilities to investigate and cleanup that site rest with the state of [insert name of state]. Specifically, [insert name of state] is responsible for the day-to-day activities at the site and will ultimately recommend the cleanup for the site. EPA's role is to review some of [insert name of state]'s milestone documents, if appropriate, provide technical assistance if needed, and, in most cases, approve the final cleanup method recommended by the state. The state and EPA work together closely, pursuant to the terms of a Memorandum of Agreement (''MOA'') to ensure that site responses are conducted in a timely manner and that interested parties are included in site activities.

Because EPA's day-to-day role at the [insert name of site] is somewhat limited, you should check with the [your state or state's environmental program] for more detailed information on site activities. [insert name of state] is best able to provide you with detailed information about the site and public documents regarding site activity. [Regions should include the state RPM name and number, or at least the state's applicable department name and number].

II. [INSERT THIS SECTION FOR SITES DESIGNATED ''DEFERRED TO STATE AUTHORITIES'' PURSUANT TO EPA'S SUPERFUND DEFERRAL POLICY]

The site about which you have inquired, [site name], is a site that falls under the federal Superfund program, but for which EPA does not have the day-to-day responsibility. Specifically, the [site name] site is not proposed for or listed on the NPL. EPA has agreed not to propose or list the [site name] site on the NPL while the state of [name of state] addresses the environmental conditions at the property under its own state authorities. While the [site name] cleanup is being conducted, EPA intends to act in accordance with ''Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions'' (OSWER Dir. 9375.6–11, May 3, 1995). A copy of this guidance is enclosed for your review and should help you to better understand EPA's role and intentions at sites for which activities are deferred to state authorities.

III. [INSERT FOR A SITE DESIGNATED ''DEFERRED'' THAT NOW HAS BEEN ARCHIVED]

The conditions at the above-referenced property were addressed by [name of state] pursuant to EPA's ''Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions'' (OSWER Dir. 9375.6–11, May 3, 1995). Upon completion of cleanup activities at the [site name], the property has been removed from EPA's inventory of hazardous waste sites, the Comprehensive Environmental Response, Compensation, and Liability Information System (''CERCLIS'). Consistent with EPA's state deferral guidance, EPA does not intend to further consider the property for listing on the NPL [or to take additional Superfund enforcement, investigatory, cost recovery, or clean up action at the property] unless EPA receives new information about site conditions that warrants reconsideration.

A copy of EPA's ''Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions'' is enclosed for your review, so that you may better understand the nature of EPA's role at the [site name]. For detailed information about site activities and conditions, you may wish to contact [insert name of state or state's environmental department], the agency responsible for overseeing activities on the property.

IV. [INSERT FOR A SITE ADDRESSED UNDER A STATE VCP THAT HAS AN MOA IN PLACE]

The site about which you have inquired, [site name], is a site contained in EPA's inventory of hazardous waste sites, the Comprehensive Environmental Response, Compensation, and Liability Information System. The [site name] site is not, however, proposed for or listed on EPA's list of highest priority sites, the National Priorities List (''NPL''). EPA and the state of [insert name of state] have agreed, pursuant to a memorandum of agreement (''MOA'') between the two agencies, to place the site under the authorities of [insert name of state]'s Voluntary Cleanup Program. For specific details regarding the activities at [site name] or the MOA, you may wish to contact the [state name or department responsible for implementing the MOA].

If you have any additional questions, or wish to discuss this information, please feel free to contact [insert EPA contact and address].

Sincerely yours,

Regional Contact:

cc: State contact

APPENDIX B—Use of Comfort Letters

Each of the sample comfort letters is intended to address a particular set of circumstances and provide whatever information is contained within EPA's databases. The sample letters do not address every possible scenario, but are based on the most commonly asked questions. To differentiate between the purposes of the letters and understand the relationship between them, the table below provides guidance on which letter to use to answer a request for information.

Question to be answered	Recommended letter if the answer is yes	Recommended letter if the answer is no
Is the site or property listed in CERCLIS?	Federal Interest Letter	No Previous Superfund Interest Letter or No Current Superfund Interest Letter.
Has the site been archived from CERCLIS?	No Current Superfund Interest	Federal Interest Letter.
Is the site or property contained (or undetermined) within the defined boundaries of a CERCLIS site?	Federal Interest Letter	No Previous Superfund Interest Letter or No Current Superfund Interest Letter.
Has the site or property been addressed by EPA and deleted from the defined site boundary?	No Current Superfund Interest Letter	Federal Interest Letter.
Is the site or property being addressed by a state voluntary cleanup program?	If a MOA is in place, No Previous Superfund Interest Letter for Non-CERCLIS sites, or State Action Letter for CERCLIS sites; in either case, in consultation with the state.	If no MOA is in place, No Previous Superfund Interest Letter for non-CERCLIS sites, No Current Superfund Interest Letter for CERCLIS sites.
Is EPA planning or currently performing a response action at the site?	Federal Interest Letter	No Previous Superfund Interest Letter for non-CERCLIS sites, No Current Superfund Interest Letter for CERCLIS sites.
Is the party asking whether or asserting that the conditions at the site or activities of the party are addressed by a statutory provision or EPA policy? (Refer to federal interest criteria on page 6)	If the party meets the policy criteria (see page 6), Federal Interest Letter, Section III, paragraph (a) with a copy of the policy or statutory/regulatory language attached.	If the party does not meet the policy criteria (see page 6), Federal Interest Letter, Section III, paragraph (b), with a copy of the policy or statutory/regulatory language attached.
Is the site in CERCLIS but designated state-lead or deferred site?	State Action Letter, in consultation with the state.	No Previous Superfund Interest Letter for Non-CERCLIS sites, Federal Interest Letter for CERCLIS sites

[FR Doc. 97–2192 Filed 1–29–97; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 62, No. 20

Thursday, January 30, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Laws

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, JANUARY

1–300 2
301–592 3
593–888 6
889–1030 7
1031–1238 8
1239–1382 9
1383–1658 10
1659–1826 13
1827–2006 14
2007–2264 15
2265–2546 16
2547–2890 17
2891–3192 21
3193–3440 22
3441–3602 23
3603–3770 24
3771–3978 27
3979–4114 28
4115–4428 29
4429–4630 30

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6763 (See Proc. 6969) 4415
6857 (See PRoc. 6969) 4415
6948 (Amended by Proc. 6969) 4415
6961 (Amended by Proc. 6969) 4415
6966 3191
6967 3441
6968 3443
6969 4415

Executive Orders:
July 2, 1910 (Revoked by PLO 7236) 3053
January 22, 1912 (Revoked by PLO 7230) 3519
October 24, 1916 (Revoked by PLO 7237) 3911
12543 (Continued by Notice of Jan. 2, 1997) 587
12544 (Continued by Notice of Jan. 2, 1997) 587
12947 (Continued by Notice of Jan. 21, 1997) 3439

Administrative Orders:
Notices:
January 2, 1997 587
January 21, 1997 ....3439, 3739
Presidential Determinations:
No. 97–11A of December 6, 1996 299
No. 97–13 of December 27, 1997 3979
No. 97–14 of December 27, 1996 1379
No. 97–15 of December 27, 1996 1381

5 CFR

315 3193
362 3193
532 3195
2640 1361
3201 3771

Proposed Rules:
213 1695
338 1695
831 2323
844 2323
2470 2547
2471 2547
2472 2547
2473 2547
2634 2048

7 CFR

2 1031
33 1032
51 .....2891, 2896
210 889
226 889
300 593
319 593
401 4115
457 .....2007, 4115
729 2719
906 3603
925 2547
929 915
932 .....1239, 2549
944 1239
959 916
982 1035
985 1246
997 1249
998 1249
999 1249
1011 918
1049 918
1079 918
1124 1
1160 3981
1205 1659
1439 3195
1464 3197
1499 2719

Proposed Rules:
17 3810
354 3823
400 2052
401 .....333, 4194
414 2055
441 2059
443 48
445 338
457 .....48, 333, 4194
723 3830
906 55
985 942

8 CFR

Proposed Rules:
1 444
3 444
103 444
204 444
207 444
208 444
209 444
211 444
212 444
213 444
214 444
216 444

217....444
221....444
223....444
232....444
233....444
234....444
235....444
236....444
237....444
238....444
239....444
240....444
241....444
242....444
243....444
244....444
245....444
246....444
248....444
249....444
251....444
252....444
253....444
274a....444
286....444
287....444
299....444
316....444
318....444
329....444

9 CFR

78....2550, 4119
91....3445
160....597
161....597
304....2551
308....2551
310....2551
320....2551
327....2551
381....2551
416....2551
417....2551

Proposed Rules:

78....1406
160....1817
161....1817
200....1845

10 CFR

9....3984
20....4120
35....4120
150....1662
170....1662

Proposed Rules:

430....4200, 4202
1008....4404
1045....2252

12 CFR

19....3199
203....3603
207....3773
220....3773
221....3773
224....3779
502....3779
516....3779
562....3779
563....3779
565....3779
574....3779
613....4429
614....4429
615....4429
618....4429
619....4429
620....4429
626....4429
932....4

Proposed Rules:

202....56
205....3242
213....62
225....2622

13 CFR

120....301
121....385

Proposed Rules:

121....2979
125....2979

14 CFR

13....4134
25....1817
27....4134
39...10, 15, 302, 304, 307, 600, 602, 604, 1038, 1039, 1041, 1044, 1275, 1277, 1278, 1383, 2007, 2009, 2552, 2898, 3200, 3204, 3209, 3446, 3448, 3449, 3451, 3739, 3781, 3784, 3985, 3988, 3991, 3993, 3994, 3996, 3997, 3999, 4002, 4002, 4003, 4137
71.....309, 607, 608, 609, 1046, 1047, 1048, 1827, 1828, 2265, 2899, 3604, 3605, 3606, 3607, 3608, 3786, 3787, 4139
73....4140, 4141
91....1192
93....2445
97.....1049, 1050, 1051, 2445, 3452, 3454, 3455
119....1192
121....1192, 3739
135....1192, 3739
382....16

Proposed Rules:

39.....343, 945, 947, 949, 951, 1061, 1298, 1299, 1695, 1859, 1861, 1864, 1866, 2324, 2981, 2982, 3832, 3834, 3836, 3837, 4203
71.....70, 347, 348, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1698, 1699, 3629, 3630, 3631, 3632, 3840, 3841, 3842, 3843, 3844, 3845, 3846, 4218, 4220
107....1024
108....1024

15 CFR

801....1665
902....1829
922....3788, 4578
929....4578
937....4578

16 CFR

Proposed Rules:

1210....2327

17 CFR

200....520, 1384
202....4104
228....520
229....520
230....520
240....520, 1279, 1385
242....520

Proposed Rules:

Ch. II....1301
1....2334
228....3152
229....3152
230....3152, 12239, 3152, 4106
240....2633, 4106
270....4106
275....4106

18 CFR

33....1281
34....1281
35....1281
36....1281
37....610
292....1281
300....1281
1314....920

Proposed Rules:

4....4494
284....1073
375....4494

19 CFR

Proposed Rules:

7....3082
10....3082
145....3082
173....3082
174....3082
181....3082
191....3082

20 CFR

211....3789
355....3790
356....3790
401....4142
402....4142
416....309, 1053
422....4142

Proposed Rules:

404....349, 352, 4494
416....352, 3633
602....2544
640....2544
650....2544
718....3338
722....3338
725....3338
726....3338
727....3338

21 CFR

5....923, 2554
101....2218, 3584, 3791
111....2218
165....2266
175....2011
178....2011, 2014
310....2218
522....4163
529....611
556....4163
579....611
812....4164
813....4164
872....2900

Proposed Rules:

101....3635
589....552, 3847
600....4221
601....4221
606....4221
812....953
882....4023
1301....1024, 2064
1304....1024, 2064

22 CFR

42....613
228....314

23 CFR

655....1364

Proposed Rules:

655....691

24 CFR

291....3766
3282....3456

Proposed Rules:

100....2000

25 CFR

151....1057

Proposed Rules:

286....4497

26 CFR

1....17, 361, 615, 923, 2267, 2275, 3458, 3792
31....22
53....25
602....22, 923, 2275

Proposed Rules:

Ch. I....3563
1....71, 72, 77, 81, 694, 955, 1700, 1701, 1702, 2064, 2068, 2335, 2336, 2633, 3244, 3848, 4024
53....84
301....77, 955, 2068, 4024
602....81

27 CFR

55....1386

28 CFR

9....314
16....2903

29 CFR

102....1361, 1668
1910....1494
1915....1494
1926....1494
1952....2558
4044....2016

Proposed Rules:

Ch. XXV....3563
2704....4025

30 CFR

250....3793
935....1668
943....4451
4044....2016

Proposed Rules:

206....3742
208....3742
902....1074
904....4499
920....4499
926....1408

935....3491
938....4499

31 CFR

Ch. V....2903
354....621
356....846
357....26
560....1832
Proposed Rules:
103....3249

32 CFR

57....2565
150....2017
199....625, 3739
220....941, 4458
352....4458
813....631
818....631
844....631
Proposed Rules:
806b....4025

33 CFR

100....3608
117....3461, 3462
154....3610
156....3610
157....1622, 3463, 3943
Proposed Rules:
117....3636
404....4223
405....4223
406....4223
407....4223

34 CFR

75....4165

36 CFR

7....2579

38 CFR

36....3610
Proposed Rules:
21....1075, 1303

39 CFR

7....4458
20....1674
60....631, 638
111....645
963....4459

40 CFR

1....1832
2....1832
21....1832
22....1832
52....646, 648, 1150, 1187, 2305, 2581, 2585, 2587, 2591, 2593, 2597, 2910, 2915, 2916, 3211, 3215, 3216, 3220, 3800, 3804, 4004, 4167, 4459
60....1832, 4463
61....1832
62....1832
63....1835, 2722, 4463
70....1387
76....3463
81....5297, 3611
82....2310, 3613
147....1832
180....1284, 1288
261....1678
262....1832
268....1992
272....1832
281....3611
282....3612
435....1681
707....1832
763....1832
799....2607
Proposed Rules:
51....210
52....695, 1420, 2633, 2634, 2635, 2636, 2984, 3252, 32530, 3254, 4505, 4514
53....2068
58....2068
60....960, 1868
63....960, 1869, 2074
81....2636
89....200
194....2988, 2989
260....960
261....960
264....960
265....960
266....960
270....960
271....960
372....365, 366
441....3849
721....1305

41 CFR

Ch. 101....2022
101–20....1057
101–38....322

42 CFR

413....26
435....1682
Proposed Rules:
Ch. IV....3563

43 CFR

10....1820
Proposed Rules:
2800....2636
2920....2636
3100....1705
4100....2636
4300....2636
4700....2636
5460....2636
5510....2636
8200....2636
8340....2636
8350....2636
8360....2636
8370....2636
8560....2636
9210....2636
9260....2636

44 CFR

64....1685, 1688
65....3223, 3226
67....3228
Proposed Rules:
67....2989, 3226

45 CFR

1311....1399

46 CFR

8....3335
31....3335
71....3335
91....3335
107....3335
572....328

47 CFR

0....4169
1....3223, 4169
20....4020
22....4020, 4169
24....653, 4020
32....2918
51....662
53....2918, 2927
73....329, 664, 2611, 2969, 4465
80....4020
90....2027, 4020
Proposed Rules:
Ch. I....3638
22....696
26....696
53....2991
61....1423
69....2636
73....84, 372, 373, 1871, 2639, 2996, 3653, 3654, 3850, 3851, 3852, 3853, 3854, 4169, 4515

48 CFR

Ch. 1....224, 275
1....226, 233, 271
2....256
3....226, 233
4....226, 233, 257
5....261, 262, 271
6....233, 256, 262
8....233
9....226, 233, 266
11....262
12....226, 233, 257, 262
13....262
14....226, 233, 261, 271
15....226, 256, 257, 261
16....233, 257
17....261
19....226, 233
23....233
24....256
25....257, 261, 267, 268
27....233, 261
29....233
31....233, 257, 269
32....233
33....226, 270
36....233, 271
37....226, 233
39....273
42....233, 274
43....226
45....233
46....257
47....233
49....233
52....226, 233, 257, 261, 273
53....226, 233
203....2611
515....2611, 2612
216....1058, 1817
219....2612
225....2612, 2615, 2616, 2856, 2857
226....2612
227....2612
233....2612
236....2856, 2857
239....1058
252....2611, 2612, 2616, 2856, 2857
904....2310
906....2310
908....2310
915....2310
923....2310
925....2310
945....2310
952....2310
970....2310
1805....4466
1815....3464, 4466
1816....3464
1831....4466
1834....4466
1835....4466
1836....4466
1837....4466
1839....4466
1841....4466
1852....3464, 4466
1870....3464, 4466
1871....4466
1872....4466
Proposed Rules:
225....374
231....374
242....374

49 CFR

1....2617
27....16
107....2970
171....1208, 1217, 2970
172....1217
173....1208, 1217
174....1217
175....1217
176....1217
177....1217
180....1208
192....2618
232....278
382....1293
383....1293
390....1293
541....1690
571....798, 1401, 2977
831....3806
1002....3487
1166....4492
1185....2041
Proposed Rules:
Ch. XI....3492
194....2989
373....4096
387....3855
390....3855
391....3855
392....3855
395....3855
396....3855
397....3855
538....375
571....807, 1077, 2996, 4228
595....831

50 CFR

17....665, 1644, 1647, 1691, 2313, 3241, 3616, 4172, 4183
36....1838

227.....1296
229.....33
259.....330
285.....331, 3490
600.....3335
622 .....689, 1402, 3808
648 .....1403, 1829, 2619, 4021
649.....1403
660.....3335, 4576
679 .....2043, 2445, 4192
Proposed Rules:
17 .....3263, 3654, 4229
24.....2354
91.....4516
300.....382
600.....700, 1306
622 .....384, 720, 2999
630.....1705
648.....1424, 3495
660.....700
678 .....724, 1705, 1872, 4239
679 .....85, 724, 2719

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Oranges, grapefruit, tangerines, and tangelos grown in Florida; published 12-31-96

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Florida citrus fruit crop; published 12-31-96

DEFENSE DEPARTMENT

Third party collection program and Comptroller of Defense Department organizational charter; CFR parts removed; published 1-30-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Chromium emissions from hard and decorative chromium electroplating and anodizing tanks; published 1-30-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Texas; published 1-30-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

FAR supplement (NFS); rewrite; published 1-30-97

POSTAL SERVICE

Board of Governors bylaws:

Sunshine Act practices; published 1-30-97

Practice and procedure:

Pandering Advertisements Statute; administrative violation cases; published 1-30-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 1-15-97

Boeing; published 12-27-96

Fokker; published 12-27-96

Jetstream; published 12-27-96

McDonnell Douglas; published 12-27-96

Class D airspace; published 9-17-96

Class D and Class E airspace; published 12-19-96

Class E airspace; published 9-20-96

Class E airspace; correction; published 12-24-96

IFR altitudes; published 12-24-96

Jet routes; published 11-22-96

Restricted areas; published 12-5-96

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Nonrail licensing procedures:

Water carriers; extension of operations; CFR part removed; published 1-30-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Onions grown in--

Texas; comments due by 2-6-97; published 1-7-97

Oranges and grapefruit grown in Texas; comments due by 2-3-97; published 1-2-97

Spearmint oil produced in Far West; comments due by 2-6-97; published 1-7-97

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Fresh market peppers; comments due by 2-3-97; published 1-3-97

Fresh market sweet corn; comments due by 2-3-97; published 1-3-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone--

Gulf of Alaska groundfish; comments due by 2-5-97; published 1-6-97

Scallop; comments due by 2-3-97; published 12-3-96

Atlantic shark; comments due by 2-7-97; published 1-29-97

Northeastern United States fisheries--

Atlantic mackerel, squid, and butterfish; comments due by 2-6-97; published 12-23-96

West Coast States and Western Pacific fisheries--

Pacific Coast groundfish; comments due by 2-5-97; published 1-6-97

CONSUMER PRODUCT SAFETY COMMISSION

Poison prevention packaging:

Child-resistant packaging requirements--

Packages containing 50 mg or more of Ketoprofen; comments due by 2-3-97; published 11-20-96

DEFENSE DEPARTMENT

Acquisition regulations:

Business combination; external restructuring costs reimbursement; comments due by 2-4-97; published 12-6-96

Contract termination or reduction notification; comments due by 2-4-97; published 12-6-96

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Practice and procedure:

Hydroelectric projects; relicensing procedures; rulemaking petition; comments due by 2-3-97; published 12-3-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

Heavy-duty engines--

Nonroad diesel engines; comments due by 2-3-97; published 1-2-97

Air quality implementation plans; approval and promulgation; various States:

Ohio; comments due by 2-5-97; published 1-6-97

Hazardous waste program authorizations:

New Mexico; comments due by 2-6-97; published 12-23-96

Hazardous waste:

Hazardous waste combustors; maximum achievable control technologies performance standards; comments due by 2-6-97; published 1-7-97

Solid wastes:

Products containing recovered materials; comprehensive guidelines for procurement; comments due by 2-5-97; published 11-7-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

International settlement rates; comments due by 2-7-97; published 12-30-96

Radio and television broadcasting:

Multipoint distribution services; comments due by 2-7-97; published 12-20-96

Radio broadcasting:

Newspaper/radio cross-ownership waiver policy; comments due by 2-7-97; published 12-11-96

Radio stations; table of assignments:

Idaho; comments due by 2-3-97; published 12-17-96

Oklahoma; comments due by 2-3-97; published 12-17-96

South Carolina; comments due by 2-3-97; published 12-17-96

Wyoming; comments due by 2-3-97; published 12-17-96

Television broadcasting:

Broadcast television national ownership rules; comments due by 2-7-97; published 12-19-96

Local television ownership and radio-television cross-ownership rules; less restrictive designated market area, etc.; comments due by 2-7-97; published 12-19-96

FEDERAL HOUSING FINANCE BOARD

Affordable housing program operation:

Amendments; comments due by 2-6-97; published 11-8-96

Federal home loan bank system:

Federal home loan bank securities; book entry regulations; comments due by 2-3-97; published 12-3-96

FEDERAL RESERVE SYSTEM

Consumer leasing (Regulation M):

Advertising disclosures for lease transactions; streamlining; comments due by 2-7-97; published 1-2-97

Depository institutions; reserve requirements (Regulation D):

Savings deposit, transaction account, savings deposit; definition clarifications; comments due by 2-4-97; published 12-31-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Health insurance portability; comment request; comments due by 2-3-97; published 12-30-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Multifamily mortgage insurance--

Risk-sharing for hospitals; comments due by 2-3-97; published 12-4-96

INTERIOR DEPARTMENT

Land Management Bureau

Land resource management:

Management, use, and protection of public lands

Criminal penalties for misuse; comment period extended; comments due by 2-5-97; published 12-16-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Alexander Archipelago wolf and Queen Charlotte Goshawk; comments due by 2-5-97; published 12-31-96

INTERIOR DEPARTMENT

Reclamation Bureau

Newlands Irrigation Project, NV; operating criteria and procedures adjustments; comments due by 2-7-97; published 12-9-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Alaska; comments due by 2-7-97; published 1-8-97

Ohio; comments due by 2-7-97; published 1-23-97

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Inspection and expedited removal of aliens; detention and removal of aliens; conduct of removal proceedings; asylum procedures; comments due by 2-3-97; published 1-3-97

JUSTICE DEPARTMENT

Executive Office for Immigration Review:

Inspection and expedited removal of aliens; detention and removal of aliens; conduct of removal proceedings; asylum procedures; comments due by 2-3-97; published 1-3-97

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Correspondence; pretrial inmates; comments due by 2-7-97; published 12-9-96

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

Employee Retirement Income Security Act:

Health insurance portability; comment request; comments due by 2-3-97; published 12-30-96

MINE SAFETY AND HEALTH FEDERAL REVIEW COMMISSION

Federal Mine Safety and Health Review Commission

Equal Access to Justice Act; implementation; comments due by 2-3-97; published 1-28-97

SMALL BUSINESS ADMINISTRATION

Business loan policy:

Low documentation loan program; participating lenders; comments due by 2-3-97; published 1-3-97

SOCIAL SECURITY ADMINISTRATION

Social security benefits:

Federal old age, survivors and disability insurance--

Self-employment wages and net earnings; comments due by 2-3-97; published 1-3-97

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

Delaware Bay and River et al., NJ; regulated navigation area; comments due by 2-5-97; published 11-7-96

Regattas and marine parades:

Augusta Invitational Rowing Regatta; comments due by 2-4-97; published 12-6-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Single-engine aircraft; commercial passenger-carying operations under instrument flight rules; comments due by 2-3-97; published 12-3-96

Airworthiness directives:

Aerospace Technologies of Australia; comments due by 2-3-97; published 12-5-96

Air Tractor, Inc.; comments due by 2-7-97; published 11-20-96

Boeing; comments due by 2-3-97; published 1-21-97

Fairchild Aircraft; comments due by 2-3-97; published 11-4-96

Raytheon; comments due by 2-3-97; published 12-2-96

Class E airspace; comments due by 2-7-97; published 11-27-96

Jet routes; comments due by 2-7-97; published 12-19-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Occupant crash protection--

Air bag deactivation; comments due by 2-5-97; published 1-6-97

Air bags deactivation; comments due by 2-5-97; published 1-6-97

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:

Distilled spirits, wine, and malt beverages; labeling and advertising--

Margarita; use of term; comments due by 2-5-97; published 11-7-96

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Health insurance portability; comment request; comments due by 2-3-97; published 12-30-96