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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–31]

Modification to Class D Airspace; Hayward, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace area at Hayward, CA. The existing Class D airspace area at Hayward Air Terminal extends outward to 5.6 miles. The FAA has determined that the existing 5.6-mile radius is unjustified based on existing air traffic control requirements and should be reduced. This action reduces the radius of the Hayward Class D airspace area to 3.5 miles, but retains an extension from 3.5-mile radius to 5.2 miles southeast of the airport to accommodate Instrument Flight Rule (IFR) arrivals. The intended effect of this action is to eliminate those portions of the Hayward Class D airspace area which are not necessary to meet terminal air traffic requirements.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

On August 11, 1997, the FAA proposed to amend 14 CFR part 71 to modify the Class D airspace area at Hayward, CA (62 FR 42954). The determination that the existing 5.6-mile radius at Hayward Air Terminal is not justified and should be reduced, has made this action necessary. The intended effect of this proposed action would eliminate those portions of the Hayward Class D airspace which are not necessary to meet air traffic control requirements.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Five comments to the proposal were received. The alterations adopted by this rule are based on the FAA's analysis of the airspace and a review of the written comments submitted to the docket. Some of the comments submitted addressed subject areas that were not relevant to this rulemaking and will not be discussed. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. Class D airspace designation listed in this document will be published subsequently in the Order.

Discussion of Comments

The FAA received five written comments regarding the proposed alteration of the Hayward Class D airspace. The comments received were from the Northern California Airspace Users Working Group (NCAUWG), the Aircraft Owners and Pilots Association (AOPA), and the Coalition for Responsible Airport Management and Policy (CRAMP). The FAA has determined that the alterations to the Hayward Class D airspace area, as contained herein, are necessary and will promote the most safe and efficient use of airspace.

Summarization of Comments

(1) AOPA, NCUAWG, and CRAMP proposed that visual reference points be included to allow circumnavigation of the Class D arrival extension. Class D airspace descriptions are published using the following methods: latitude and longitude, radials and Distance Measuring Equipment (DME) from existing Navigational Aids (NAVAIDS), and bearing from the Airport Reference Point (ARP). Presently, visual reference pints are used only when describing Class B and Class C airspace areas. The use of visual reference points to describe Class D airspace areas will be taken under advisement.

(2) AOPA and CRAMP requested that Class D arrival extension be classified as Class E airspace. AOPA requested the FAA issue a waiver to FAA Order 7400.2D, Procedures for Handling Airspace Matters, allowing the airspace within the extension to be classified as Class E airspace. FAA Order 7400.2D states that a surface area arrival extension of two miles or less, will remain part of the basic surface area. The FAA establishes Class D airspace to contain terminal arrival operations, and may include any extensions necessary to contain arrival aircraft operating under IFR.

(3) CRAMP does not concur will the proposed revision of Hayward Class D airspace, stating that the FAA has offered no justification for its proposal. The FAA requires justification for all proposed Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP's) from the airport authority that initiated the action. Justification for this proposed GPS SIAP to Runway (RWY) 28L was received from the Hayward Air Terminal authority. This information is on file in the Office of the Manager, Los Angeles Flight Procedures Office, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261. Further justification was provided in the form of a Notice of Proposed Rulemaking (NPRM), which was published in the **Federal Register** on August 11, 1997. The primary purpose of the GPS SIAP to RWY 28L at Hayward Air Terminal is to provide expanded airport capability to train pilots for the latest in global positioning approaches, to allow operations in lower weather minimums, and to provide general aviation relief at neighboring Metropolitan Oakland International Airport.

(4) CRAMP questioned the FAA as to whether an analysis had been done as to the effects on circumnavigating traffic that either did not want, or could not get, ATC services. The FAA did not provide an analysis of this type, since air traffic control services are available at the Hayward Air Traffic Control Tower.

(5) CRAMP stated that the mileages were not specified as statute or nautical miles. All mileages contained in airspace descriptions are nautical, as prescribed in FAA Order 7400.2D.

The Rule

This amendment to 14 CFR part 71 modifies the Class D airspace area at Hayward, CA. The FAA is reducing the overall dimensions of the Class D airspace area at Hayward Air Terminal, CA. Where a FAA airport traffic control tower (ATCT) is in operation, the FAA establishes Class D airspace to contain terminal operations. Class D airspace areas generally extend outward from the center of an airport as far as is necessary to contain intended operations, and may include any extensions necessary to contain arriving and departing aircraft operating under Instrument Flight Rules (IFR). The existing Class D airspace area at Hayward Air Terminal extends outward to 5.6 miles, excluding the airspace within the San Francisco Class B, and Oakland Class C, airspace areas. The FAA has determined, based on present air traffic control requirements, that the 5.6-mile radius is not justified. Therefore, this action reduces the radius of the Hayward Class D airspace area to 3.5 miles, but retains an extension from the 3.5-mile radius to 5.2 miles southeast of the airport to accommodate IFR arrivals. Airspace within the Oakland Class C airspace area is excluded. The intended effect of this action is to eliminate those portions of the Hayward Class D airspace area which are not necessary to meet terminal air traffic control requirements. The area will be depicted on appropriate aeronautical charts for pilot reference.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Hayward, CA [Revised]

Hayward Air Terminal, CA
(Lat. 37°39′34″N, long. 122°07′21″W)
Metropolitan Oakland International Airport
(Lat. 37°43′17″N, long. 122°13′15″W)

That airspace extending upward from the surface to but not including 1,500 feet MSL within a 3.5-mile radius of the Hayward Air Terminal and within 1.8 miles each side of the 119° bearing from the Hayward Air Terminal, extending from the 3.5-mile radius to 5.2 miles southeast of the Hayward Air Terminal, excluding that portion within the Metropolitan Oakland International Airport, CA, Class A airspace area. This Class D airspace area is effective during the specific dates and times established in advance in a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on January 21, 1998.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–3569 Filed 2–11–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–29]

Modification of Class E Airspace; Yuma, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace areas at Yuma, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 17 and a GPS SIAP to RWY 21R at Yuma Marine Corps Air Station (MCAS)-Yuma International Airport has made this action necessary. Additional controlled airspace extending upward from the surface, and from 700 feet above ground level (AGL) is needed to contain aircraft executing the approaches. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Yuma MCAS-Yuma International Airport, Yuma, AZ.

EFFECTIVE DATE: 0901 UTC April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (301) 725–6613.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1997, the FAA proposed to amend 14 CFR part 71 to modify the Class E airspace areas at Yuma, AZ (62 FR 53987). The development of two GPS SIAP's at Yuma MCAS-Yuma International Airport has made this action necessary. The intended effect of this action is to provide additional controlled airspace extending upward from the surface, and from 700 feet AGL, to contain aircraft executing the GPS RWY 17 SIAP and the GPS RWY 21R SIAP to Yuma MCAS-Yuma International Airport, Yuma, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas designated as an extension to a Class D or Class E surface area, and for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraphs 6004 and 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Minor changes have been made to this proposal to ensure continuity with surrounding airspace areas.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace areas at Yuma, AZ. The development of two GPS SIAP's at Yuma MCAS-Yuma International Airport has made this action necessary. Additional controlled airspace extending upward from the surface, and from 700 feet AGL is needed to contain aircraft executing these approaches. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the GPS RWY 17 SIAP and the GPS RWY 21R SIAP at Yuma MCAS-Yuma International Airport, AZ.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR § 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

AWP AZ E4 Yuma, AZ [Revised]

Yuma MCAS-Yuma International Airport, AZ
(Lat. 32°39′24″N, long. 114°36′22″W)
Bard VORTAC
(Lat. 32°46′05″N, long. 114°36′10″W)

That airspace extending upward from the surface within 1.8 miles either side of the Bard VORTAC 181° radial extending from the Bard VORTAC to the 5.2 mile radius of the Yuma MCAS-Yuma International Airport and within that airspace bounded by a line beginning at lat. 32°44′05″N, long. 114°33′41″W; to lat. 32°50′00″N, long. 114°31′00″W; to lat. 32°49′00″N, long. 114°27′00″W; to lat. 32°40′15″N, long. 114°30′17″W, thence counterclockwise via the 5.2-mile radius of the Yuma MCAS-International Airport, to the point of beginning.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Yuma, AZ [Revised]

Yuma MCAS-Yuma International Airport, AZ
(Lat. 32°39′24″N, long. 114°36′22″W)
Blythe Airport
(Lat. 33°37′09″N, long. 114°43′01″W)

That airspace extending upward from 700 feet above the surface beginning at lat. 32°41′00″N, long. 114°25′09″W, thence clockwise via the 9.6-mile radius of Yuma MCAS-Yuma International Airport to lat. 32°29′58″N, long. 114°34′09″W; to lat. 32°28′00″N, long. 114°34′33″W; to lat. 32°28′00″N, long. 114°38′43″W; to lat. 32°29′58″N, long. 114°38′31″W, thence clockwise via the 9.6-mile radius of the Yuma MCAS-Yuma International Airport excluding that portion outside of the United States to lat. 32°47′44″N, long. 114°42′03″W; to lat. 33°08′00″N. long. 114°55′00″W; to lat. 33°08′00″N, long. 114°30′00″W; to lat. 32°57′30″N, long. 114°30′00″W; to lat. 32°57′30″N, long. 114°15′03″W; to lat. 32°41′00″N, long. 114°15′03″W, thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded by an area starting at a point lat. 33°01′47″N, long. 114°51′01″W; to lat. 33°05′30″N, long. 114°24′33″W; to lat. 32°23′00″N, long. 114°24′33″W; to lat. 32°29′30″N, long. 114°46′03″W, thence to the point of beginning excluding that portion outside the United States. That airspace extending upward from 4,000 feet MSL, bounded by an area beginning at lat. 33°21′45″N, long. 114°47′25″W; to lat. 33°08′00″N, long. 114°45′00″W; to lat. 33°08′00″N, long. 114°55′00″W; to lat. 33°01′47″N, long. 114°51′01″W; to lat. 32°49′33″N, long. 114°49′08″W; to lat. 32°49′12″N, long. 115°15′16″W; to lat. 32°52′23″N, long. 115°15′24″W; to lat. 32°56′20″N, long. 115°15′03″W; to lat. 33°04′00″N, long. 114°56′03″W; to lat. 33°23′45″N, long. 114°53′05″W, thence counterclockwise along a 15.8-mile radius of the Blythe Airport, to the point of beginning. That airspace extending upward from 9,000 feet MSL bounded on the west by the eastern edge of V–135, on the south by lat. 33°08′00″N, on the north by the arc of the 15.8-mile radius south of Blythe Airport, and on the east by the western edge of R–2306C and R–2306A.

* * * * *

Issued in Los Angeles, California, on January 21, 1998.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–3568 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–44]

Amendment to Class E Airspace; Ravenswood, WV

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Ravenswood, WV. The development of new Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) at Jackson County Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 4 SIAP and the GPS RWY 22 SIAP to Jackson County Field Airport at Ravenswood, WV.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On December 10, 1997, a proposal to amend 14 CFR Part 71 to modify Class E airspace at Ravenswood, WV, was published in the **Federal Register** (62 FR 65040). The development of a GPS RWY 4 SIAP and a GPS RWY 22 SIAP for Jackson County Field Airport, requires the amendment of the Class E

airspace at Ravenswood, WV. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 Part 71 modifies Class E airspace at Ravenswood, WV, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 4 SIAP and GPS RWY 22 SIAP to Jackson County Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV AEA E5 Ravenswood, WV [Revised]

Jackson County Airport, WV
(Lat. 38°55′47″N., long. 81°49′10″W.)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Jackson County Airport, excluding that portion that coincides with the Point Pleasant, WV and Gallipolis, OH Class E airspace areas.

* * * * *

Issued in Jamaica, New York on January 26, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–3565 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–31]

Amendment to Class E Airspace; Mason City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Mason City Municipal Airport, Mason City, IA. The FAA has developed an Instrument Landing System (ILS) Runway (RWY) 35 Standard Instrument Approach Procedure (SIAP) to serve the Mason City Municipal Airport. The enlarged Class E airspace area 700 feet Above Ground Level (AGL) will contain the ILS RWY 35 SIAP in controlled airspace. The intended effect of this rule is to provide additional controlled Class E airspace extending upward from 700 feet AGL to accommodate this SIAP.

DATES: *Effective date:* 0901 UTC, June 18, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before April 25, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–31, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed an ILS RWY 35 SIAP at Mason City Municipal Airport, Mason City, IA. The amendment to Class E airspace area at Mason City Municipal Airport will provide additional controlled airspace in order to contain the SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of

safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ACE–31.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Mason City, IA [Revised]

Mason City Municipal Airport, IA
(Lat. 43°09′28″N., long. 93°19′53″W.)
Mason City VORTAC
(Lat. 43°05′41″N., long. 93°19′47″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Mason City Municipal Airport; and within 3 miles each side of the 002° radial of the Mason City VORTAC extending from the 6.7-mile radius to 21 miles north of the VORTAC; and within 3 miles each side of the 182° radial of the Mason City VORTAC extending from the 6.7-mile radius to 18.5 miles south of the VORTAC.

* * * * *

Issued in Kansas City, MO, on December 23, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3576 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–25]

Amendment of Class E Airspace; Owensboro, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace areas at Owensboro, KY. A VHF Omnidirectional Range (VOR) Runway (RWY) 5 Standard Instrument Approach Procedure (SIAP) has been developed for Owensboro-Daviess County Airport. As a result additional controlled airspace is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport. This amendment will provide a southwest extension to the existing Class D surface area and increase the radius of the Class E airspace that extends upward from 700 feet above the surface of the earth.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On November 19, 1997, the FAA proposed to amend 14 CFR part 71 to modify the Class E airspace areas at Owensboro, KY (62 FR 61709). This action would provide adequate Class E airspace for IFR operations at Owensboro-Daviess County Airport.

Class E airspace areas designated as an extension to a Class D surface area, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 6004 and 6005, respectively, of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Owensboro, KY. A VOR RWY 5 SIAP has been developed for Owensboro-Daviess County Airport. Additional controlled airspace is needed to accommodate this SIAP and for IFR operations at Cincinnati-Blue Ash Airport. This amendment will provide a southwest extension to the existing Class D surface area and increase the radius of the Class E airspace that extends upward from 700 feet above the surface of the earth.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

ASO KY E4 Owensboro, KY [Revised]

Owensboro-Daviess County Airport, KY
Lat. 37°44′25″N, long. 87°10′00″W)
Owensboro VOR/DME
Lat. 37°44′37″N, long. 87°09′57″W)

That airspace extending upward from the surface within 3 miles each side of Owensboro VOR/DME 351°, 177°, and 223° radials, extending from the 4.1-mile radius of Owensboro-Daviess County Airport to 7 miles north, south and southwest of the Owensboro VOR/DME. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airman. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6006 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Owensboro, KY [Revised]

Owensboro-Daviess County Airport, KY
(Lat. 37°44′25″N, long. 87°10′00″W)

That airspace extending upward from 700 feet or more above the surface within a 7.2-mile radius of Owensboro-Daviess County Airport.

* * * * *

Issued in College Park, Georgia, on January 5, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–3575 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–26]

Amendment of Class E Airspace; New Bern, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at New Bern, NC. The required weather observation information is available on a continuous basis to the air traffic control facility providing service to Craven County Airport, New Bern, NC. Therefore, the Class E surface area airspace at New Bern, NC, meets the requirement for modification from part time to continuous.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On December 8, 1997, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at New Bern, NC (62 FR 64525). This action would provide adequate Class E airspace for IFR operations at New Bern, NC on a continuous basis. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR pat 71 modifies Class E airspace at New Bern, NC. The Class E surface area airspace at New Bern, NC, is modified from part time to continuous.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO NC E2 New Bern, NC [Revised]

New Bern, Craven County Regional Airport, NC
(Lat. 35°04′21″N, long. 77°02′37″W)
New Bern VOR/DME
(Lat. 35°04′23″N, long. 77°02′35″W)

Within a 4-mile radius of Craven County Regional Airport and within 2.4 miles each side of New Bern VOR/DME 038° and 210° radials, extending from the 4-mile radius to 7 miles northeast and southwest of the VOR/DME.

* * * * *

Issued in College Park, Georgia, on February 2, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–3574 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–26]

Revision of Class E Airspace; Eastland, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Eastland, TX. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) and a Global Positioning System (GPS) SIAP to Runway (RWY) 35 at Eastland Municipal Airport, Eastland, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Eastland Municipal Airport, Eastland, TX.

DATES: Effective 0901 UTC, April 23, 1998.

Comments must be received on or before March 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–ASW–26, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Eastland, TX. The development of NDB and GPS SIAP's to RWY 35 at Eastland Municipal Airport, Eastland, TX, has made this action necessary. The intended effect of this action is to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Eastland Municipal Airport, Eastland, TX.

Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date

for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ASW–26.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 24 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points,* dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Eastland, TX [Revised]

Eastland Municipal Airport, TX
(Lat. 32°24′48″N., long. 98°48′35″W.)
Old Rip RBN
(Lat. 32°22′54″N., long. 98°48′37″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Eastland Municipal Airport and within 8 miles east and 4 miles west of the 182° bearing from the Old Rip RBN extending from the 6.4-mile radius to 10.4 miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on January 7, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–3573 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29134; Amdt. No. 1851]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S.

Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on February 6, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
01/12/98	FL	PANAMA CITY	PANAMA CITY-BAY CO INTL	8/0307	VOR OR TACAN OR GPS RWY 32, AMDT 10A...
01/16/98	OH	COLUMBUS	RICKENBACKER INTL	8/0402	ILS RWY 5R, AMDT 1...
01/22/98	FL	CRYSTAL RIVER	CRYSTAL RIVER	8/0461	VOR/DME OR GPS–A ORIG–A...
01/22/98	GA	VALDOSTA	VALDOSTA REGIONAL	8/0458	ILS RWY 35 AMDT 5A...
01/22/98	MS	JACKSON	JACKSON INTL	8/0459	ILS RWY 16L AMDT 7B(CAT III)...
01/23/98	GA	SAVANNAH	SAVANNAH INTL	08/0521	ILS RWY 9, AMDT 25A...
01/23/98	GA	SAVANNAH	SAVANNAH INTL	8/0522	ILS RWY 36, AMDT 6A...
01/23/98	GA	SAVANNAH	SAVANNAH INTL	8/0523	VOR OR TACAN OR GPS RWY 27, AMDT 15B...
01/23/98	MO	AVA	AVA—BILL MARTIN MEMORIAL	8/0509	VOR OR GPS–A, AMDT 1...
01/23/98	MO	NEOSHO	NEOSHO MEMORIAL	8/0508	VOR OR GPS–A, AMDT 6...

FDC date	State	City	Airport	FDC No.	SIAP
01/23/98	MO	NEOSHO	NEOSHO MEMORIAL	8/0512	VOR/DME RNAV OR GPS RWY 19, AMDT 3...
01/23/98	NC	ERWIN	HARNETT COUNTY	8/0526	VOR/DME RWY 4, AMDT 1B...
01/23/98	NC	ERWIN	HARNETT COUNTY	8/0527	NDB OR GPS RWY 22, ORIG–B...
01/23/98	NC	ERWIN	HARNETT COUNTY	8/0528	GPS RWY 4, ORIG–A...
01/23/98	TX	HOUSTON	GEORGE BUSH INTERCONTINENTIAL ARPT.	9/0515	ILS RWY 8, AMDT 18D...
01/23/98	TX	HOUSTON	WILLIAM P. HOBBY	8/0516	VOR/DME RWY 17, AMDT 1...
01/26/98	MO	AVA	AVA—BILL MARTIN MEMORIAL	8/0579	VOR/DME RNAV OR GPS RWY 31, AMDT 1...
01/26/98	MO	AVA	AVA—BILL MARTIN MEMORIAL	8/0585	NDB RWY 31, ORIG...
01/26/98	NE	CAMBRIDGE	CAMBRIDGE MUNI	8/0587	NDB OR GPS RWY 32, AMDT 3...
01/26/98	NE	CAMBRIDGE	CAMBRIDGE MUNI	8/0588	NDB OR GPS RWY 14, AMDT 3...
01/26/98	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	8/0592	CONVERGING ILS RWY 31R, AMDT 3...
01/27/98	KY	LONDON	LONDON-CORBIN ARPT-MAGEE FIELD.	8/0614	VOR OR GPS RWY 5, AMDT 12A...
01/27/98	KY	LONDON	LONDON-CORBIN ARPT-MAGEE FIELD.	8/0615	VOR/DME RNAV RWY 5, AMDT 3...
01/27/98	NC	AHOSKI	TRI-COUNTY	8/0612	VOR/DME OR GPS A AMDT 4A...
01/27/98	NC	AHOSKI	TRI-COUNTY	8/0613	NDB OR GPS RWY 1, AMDT 1B...
01/27/98	TX	DALLAS	DALLAS-LOVE FIELD	8/0610	ILS RWY 31L, AMDT 19...
01/30/98	ME	GREENVILLE	GREENVILLE MUNI	8/0691	NDB OR GPS RWY 14 AMDT 4...
01/30/98	ME	GREENVILLE	GREENVILLE SEAPLANE BASE	8/0692	NDB OR GPS–A AMDT 4A...
02/02/98	TN	MEMPHIS	MEMPHIS INTL	8/0750	ILS RWY 36R (CAT I, III),, ORIG...
02/03/98	AK	ANCHORAGE	ANCHORAGE INTL	8/0783	ILS RWY 6R, AMDT 11A...
02/03/98	AK	ANCHORAGE	ANCHORAGE INTL	8/0784	RADAR–1 AMDT 9...
02/03/98	AK	ANCHORAGE	ANCHORAGE INTL	8/0785	NDB RWY 6R, AMDT 6C...
02/03/98	AK	ANCHORAGE	ANCHORAGE INTL	8/0788	GPS RWY 6L, ORIG...
02/03/98	AK	ANCHORAGE	ANCHORAGE INTL	8/0789	MLS RWY 6L, ORIG...
02/03/98	AK	ANCHORAGE	ANCHORAGE INTL	8/0790	LOC RWY 6L, AMDT 9...
02/03/98	OH	ZANESVILLE	ZANESVILLE MUNI	8/0764	VOR OR GPS RWY 22, AMDT 3...
02/05/98	MA	ORANGE	ORANGE MUNI	8/0812	GPS RWY 32 ORIG...
12/23/97	AR	FORREST CITY	FORREST CITY MUNI	7/8371	NDB RWY 35 AMDT 4...
12/23/97	AR	FORREST CITY	FORREST CITY MUNI	7/8373	GPS RWY 35 ORIG...

[FR Doc. 98–3571 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29133; Amdt. No. 1850]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards

Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4 and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC, on February 6, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective February 26, 1998*

Jacksonville, FL, Jacksonville Intl, LOC RWY 25, Amdt 8, CANCELLED
Jacksonville, FL, Jacksonville Intl, ILS RWY 25, Orig
Marshalltown, IA, Marshalltown Muni, VOR RWY 12, Orig
Marshalltown, IA, Marshalltown Muni, VOR RWY 30, Orig
Marshalltown, IA, Marshalltown Muni, NDB RWY 12, Amdt 7
Flemingsburg, KY, Fleming-Mason, LOC RWY 25, Orig
Charlotte, NC, Charlotte/Douglas Intl, ILS RWY 36R, Amdt 8
Columbus, OH, Port Columbus Intl, ILS RWY 28R, Orig
Youngstown, OH, Youngstown-Warren Regional, ILS RWY 14, Amdt 6
Youngstown, OH, Youngstown-Warren Regional, ILS RWY 32, Amdt 25
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS RWY 31R, Amdt 9
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 16L, Amdt 11
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 16R, Amdt 2
Appleton, WI, Outagamie County, LOC BC RWY 21, Orig

** * * Effective March 26, 1998*

Wichita, KS, Mid-Continent, MLS RWY 19, Amdt 1, CANCELLED
Louisville, KY, Louisville Intl-Standiford Field, LOC RWY 35L, Orig
Louisville, KY, Louisville Intl-Standiford Field, ILS RWY 17L, Orig
New Orleans, LA, New Orleans Intl (Moisant Field), RADAR–1, Amdt 17
Linden, MI, Prices, VOR OR GPS–A, Amdt 4
Omaha, NE, Eppley Airfield, ILS RWY 14R, Amdt 2

** * * Effective April 23, 1998*

West Memphis, AR, West Memphis Muni, VOR/DME OR GPS–A, Amdt 6
West Memphis, AR, West Memphis Muni, NDB OR GPS–B, Amdt 3
West Memphis, AR, West Memphis Muni, NDB OR GPS RWY 17, Amdt 10
West Memphis, AR, West Memphis Muni, ILS RWY 17, Amdt 3
Wilmington, DE, New Castle County, GPS RWY 9, Orig
Pittsfield, ME, Pittsfield Muni, GPS RWY 19, Orig
Preston, MN, Fillmore County, GPS RWY 28, Orig
Poplar Bluff, MO, Poplar Bluff Municipal, GPS RWY 18, Orig
Poplar Bluff, MO, Poplar Bluff Municipal, GPS RWY 36, Orig

** * * Effective April 23, 1998 (cont'd)*

Greenwood, MS, Greenwood-Leflore, GPS RWY 5, Orig
Greenwood, MS, Greenwood-Leflore, GPS RWY 18, Orig
Greenwood, MS, Greenwood-Leflore, GPS RWY 36, Orig
Ocean City, NJ, Ocean City Muni, GPS RWY 6, Orig
Bottineau, ND, Bottineau Muni, GPS RWY 31, Orig
Grafton, ND, Grafton Muni, GPS RWY 17, Orig

Grafton, ND, Grafton Muni, GPS RWY 35, Amdt 1
Shirley, NY, Brookhaven, VOR RWY 6, Amdt 3
Shirley, NY, Brookhaven, NDB–A, Amdt 5
Shirley, NY, Brookhaven, ILS RWY 6, Amdt 1
Shirley, NY, Brookhaven, GPS RWY 6, Orig
Shirley, NY, Brookhaven, GPS RWY 24, Orig
Marion, OH, Marion Muni, GPS RWY 24, Orig
Allentown, PA, Allentown Queen City Muni, VOR OR GPS–B, Amdt 6
Allentown, PA, Allentown Queen City Muni, GPS RWY 7, Orig
Butler, PA, Butler County/K W Scholter Field, VOR OR GPS–A, Amdt 5, CANCELLED
Butler, PA, Butler County/K W Scholter Field, GPS RWY 8, Orig
Butler, PA, Butler County/K W Scholter Field, GPS RWY 26, Orig
Butler, PA, Butler County/K W Scholter Field, RNAV OR GPS RWY 26, Amdt 2, CANCELLED
Coatesville, PA, Chester County G O Carlson, VOR RWY 29, Amdt 5A, CANCELLED
Coatesville, PA, Chester County G O Carlson, GPS RWY 11, Orig
Coatesville, PA, Chester County G O Carlson, GPS RWY 29, Orig
Cedar City, UT, Cedar City Regional, VOR RWY 20, Amdt 5
Cedar City, UT, Cedar City Regional, NDB RWY 20, Amdt 1
Cedar City, UT, Cedar City Regional, ILS RWY 20, Amdt 2
Cedar City, UT, Cedar City Regional, GPS RWY 20, Orig

* * * *Effective Upon Publication*

Agana, Guam, Guam Intl, ILS RWY 6L, Amdt 1.

[FR Doc. 98–3570 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172 and 173

[Docket No. 96F–0076]

Direct and Secondary Direct Food Additives; Sodium Mono- and Dimethyl Naphthalene Sulfonates

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sodium mono- and dimethyl naphthalene sulfonates as an aid in the steam/scald vacuum peeling of tomatoes without a subsequent potable water wash. This action is in response to a petition filed by Enviro Tech Chemical Services, Inc. In conjunction with this action, the agency is also amending the food additive regulations by broadening a section heading to cover the new application and by removing the redundant cross-reference to a section.

DATES: Effective February 12, 1998; written objections and requests for a hearing by March 16, 1998.

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

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3077.

SUPPLEMENTARY INFORMATION:

In a notice published in the **Federal Register** of March 19, 1996 (61 FR 11214), FDA announced that a food additive petition (FAP 6A4487) had been filed by Enviro Tech Chemical Services, Inc., P.O. Box 577470, Modesto, CA 95357. The petition proposed to amend the food additive regulations in § 172.824 *Sodium mono- and dimethyl naphthalene sulfonates* (21 CFR 172.824) to provide for the safe use of sodium mono- and dimethyl naphthalene sulfonates as an aid in peeling tomatoes without a potable water wash.

Sodium mono- and dimethyl naphthalene sulfonates are currently approved in § 172.824 as an anticaking agent in sodium nitrite, for use in the crystallization of sodium carbonate intended for use in potable water systems to reduce hardness and aid in sedimentation and coagulation and by cross-reference to § 173.315 *Chemicals used in washing or to assist in the lye peeling of fruits and vegetables* (21 CFR 173.315), in the washing or to assist in the lye peeling of fruits and vegetables. The subject additive is defined in § 172.824 and, as cross-referenced in § 172.824(b)(3), may be used in the washing or to assist in the lye peeling of fruits and vegetables as prescribed in § 173.315, only when this use is followed by rinsing with potable water to remove, to the extent possible, residues of the chemicals. Therefore, the action requested by this petition is more appropriately addressed by amending § 173.315 to allow the use of the subject additive in the steam/scald vacuum peeling of tomatoes without a subsequent potable water wash. Although only an amendment to § 172.824 was cited in the filing notice for this petition, the action currently being taken was accurately described at that time.

In addition, FDA is amending the section heading of § 173.315 by removing the word ''lye.'' This action is being taken to broaden § 173.315 to cover the new application for steam/scald vacuum peeling in addition to lye peeling. This action is simply a technical change because the current limitations continue to be stated in paragraphs (a)(2) and newly redesignated (a)(4).

In continuation of FDA's efforts to implement the President's March 4, 1995 ''Reinventing Government'' initiative, FDA is also removing as redundant § 172.824(b)(3), because this paragraph is an unnecessary cross-reference to the regulation of the additive under § 173.315. This action is also a technical change because the approved uses of the subject additive are not changed by virtue of the deletion.

FDA has evaluated data in the petition and other relevant material. As part of its review, FDA evaluated data on the use of the subject additive in peeling tomatoes using steam or scalding water instead of lye, including analytical evidence that no residues of the additive were detected in five production samples of tomato paste prepared from tomatoes treated with the additive prior to peeling, but with no subsequent potable water rinse. Based on this information, as well as certain toxicological data, the agency concludes that the additive will have the intended technical effect and is safe under the proposed conditions of use. Therefore, the agency is amending the food additive regulations to provide for the requested use.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4

p.m., Monday through Friday. No comments were received during the 30-day comment period specified in the filing notice for comments on the environmental assessment submitted with the petition.

Any person who will be adversely affected by this regulation may at any time on or before March 16, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 172 and 173 are amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

§ 172.824 [Amended]

2. Section 172.824 *Sodium mono- and dimethyl naphthalene sulfonates* is amended by removing paragraph (b)(3).

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

3. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

4. Section 173.315 is amended by revising the section heading; by removing from the introductory text the word ''lye;'' by amending the table in paragraph (a)(2) by revising the entries for ''Polyacrylamide,'' ''Potassium bromide,'' and ''Sodium hypochlorite;'' and the entry for Sodium mono- and di-methyl napthalene sulfonates * * *'' is amended by removing the hyphen in ''di-methyl'' under the ''Substances'' column; by redesignating paragraph (a)(3) as paragraph (a)(4) and by adding a new paragraph (a)(3); by amending the first sentence of newly redesignated paragraph (a)(4) by removing ''(a)(3)'' and adding in its place ''(a)(4);'' and by revising paragraph (c) to read as follows:

§ 173.315 Chemicals used in washing or to assist in the peeling of fruits and vegetables.

* * * * *

(a) * * *

(2) * * *

Substances	Limitations
* * *	* * * *
Polyacrylamide	Not to exceed 10 parts per million in wash water. Contains not more than 0.2 percent acrylamide monomer. May be used in the washing of fruits and vegetables.
Potassium bromide	May be used in the washing or to assist in the lye peeling of fruits and vegetables.
* * *	* * * *
Sodium hypochlorite	May be used in the washing or to assist in the lye peeling of fruits and vegetables.

(3) Sodium mono- and dimethyl naphthalene sulfonates (mol. wt. 245–260) may be used in the steam/scald vacuum peeling of tomatoes at a level not to exceed 0.2 percent in the condensate or scald water.

* * * * *

(c) The use of the chemicals listed under paragraphs (a)(1), (a)(2), and (a)(4) is followed by rinsing with potable water to remove, to the extent possible, residues of the chemicals.

* * * * *

Dated: February 2, 1998.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–3497 Filed 2–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[USCG 98–3417]

RIN 2115–AF60

Salvage and Firefighting Equipment; Vessel Response Plans

AGENCY: Coast Guard, DOT.

ACTION: Final rule; partial suspension of regulation.

SUMMARY: Current vessel response plan regulations require that the owners or operators of vessels carrying groups I through V petroleum oil as a primary cargo identify in their response plans a salvage company with expertise and equipment, and a company with firefighting capability that can be deployed to a port nearest to the vessel's operating area within 24 hours of notification (Groups I–IV) or a discovery of a discharge (Group V). Numerous requests for clarification revealed widespread misunderstanding and confusion regarding the regulatory language, which will make the implementation of this requirement difficult. Based on comments received after the vessel response plan final rule publication (61 FR 1052; January 12, 1996) and during a Coast Guard hosted workshop, the Coast Guard intends to better define expertise and equipment requirements and will reconsider the 24-hour deployment requirement scheduled to take effect on February 18, 1998. The Coast Guard has determined that there is not adequate time to address these issues before February, 1998. Therefore, the Coast Guard is suspending the effective dates of the deployment requirements as published in the final rule.

DATES: This suspension is effective as of February 12, 1998. Termination of the suspension will be on February 12, 2001.

ADDRESSES: You may mail comments to the Docket Management Facility, (USCG–98–3417), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street S.W., Washington, D.C. 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located at the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this rulemaking on the internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, contact Carol Kelley, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329. For information concerning the final rule partial suspension of regulation, contact LCDR John Caplis, Project Manager, Office of Response (G–MOR), at 202–267–6922; e-mail: jcaplis@comdt.uscg.mil. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Regulatory History

The regulatory history for this rulemaking is recounted in the preamble of the final rule entitled ''Vessel Response Plans'' (61 FR 1052, January 12, 1996).

Reason for Suspension

Regulations found in 33 CFR 155 require vessel owners and operators to identify salvage and firefighting resources in their response plans. No specific response times were mandated for these resources due to concerns over the capacity of these resources that existed in the United States in 1993. However, under the final rule, vessel response plans submitted (or resubmitted) for approval after February 18, 1998, must identify salvage and firefighting resources capable of being deployed to the port nearest to the vessel's operating area within 24 hours of notification.

The regulations allow vessel owners and operators to determine their salvage and firefighting response needs, and to arrange for the appropriate level of resources. To promote planning consistency throughout the United States regarding the adequacy of salvage and firefighting resources, the Coast Guard hosted a public workshop in August 1997 with the Maritime Association of the Port of New York/New Jersey. This workshop solicited comments from the public regarding the current requirements for salvage and firefighting resources. Considerable differences in opinion and requests for clarification were voiced by vessel owners and/or operators, salvage and firefighting contractors, maritime associations, and governmental agencies with respect to the proper interpretation of these requirements. The numerous requests for clarification revealed widespread misunderstanding and confusion regarding the regulatory language, which will make the implementation of the requirement difficult.

Based on comments received during the workshop, the Coast Guard has determined that it should better define the key elements within the requirements. Regulatory language such as ''a salvage company with expertise and equipment'' or ''firefighting capability'' must be further specified before the Coast Guard will implement or expect vessel owners or operators to comply with any related time requirements. Therefore, the Coast Guard is suspending its February 18, 1998, requirement that ''identified salvage and firefighting resources must be capable of being deployed to the port nearest to the area in which the vessel operates within 24 hours of notification'' for plans that are submitted (or resubmitted) for approval after that time. As follow-on to the August 1997 workshop and other efforts, the Coast Guard is continuing to review the salvage and marine firefighting capabilities within the United States and its territories. The Coast Guard intends to conduct a regulatory initiative in 1998 to further define the salvage and firefighting requirements and address the issues raised at the August 1997 workshop. Any additional requirements will be published in the **Federal Register** and will not become effective until 90 days after publication of a notice reporting the determinations of the Coast Guard.

Regulatory Process Considerations

Although the final rule published in 1996 was a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget (OMB) does not consider this partial suspension of the final rule as a significant action. This action 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.*) and 1996 amendments (enacted as Chapter 8 of Title 5, U.S. Code) because the original requirements did not have a significant effect on a substantial number of small entities, and this suspension does not change those requirements. Any future regulatory action on this issue will address any economic impacts, including impacts on small business. This action does not affect any requirements under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This action is not an unfunded mandate under the Unfunded Mandates Reform Act (Pub. L. 104–4).

Numerous requests for clarification revealed widespread misunderstanding and confusion regarding the regulatory language, which will make the implementation of the requirement difficult. The partial suspension will relieve the affected industry from complying until regulations can be drafted more thoroughly addressing this requirement. The Coast Guard finds good cause under 5 U.S.C. 553(b) that

notice and comment on the suspension are impracticable and contrary to the public interest. Because the section otherwise becomes effective on February 18, 1998, there is good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 33 CFR Part 155

Hazardous substances, Incorporation by reference, oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§§ 155.100–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030 (j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.110–155.1150 also issued 33 U.S.C. 2735.

§ 155.1050 [Amended]

2. In § 155.1050, paragraph (k)(3) is suspended from February 12, 1998, until February 12, 2001.

§ 155.1052 [Amended]

3. In § 155.1052, the last sentence in paragraph (f) is suspended from February 12, 1998, until February 12, 2001.

Dated: February 6, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–3564 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX76–1–7378; FRL–5966–2]

Expiration of Extension of Temporary Section 182(f) and Section 182(b) Exemption From the Nitrogen Oxides (NO_X) Control Requirements for the Houston/Galveston and Beaumont/Port Arthur Ozone Nonattainment Areas; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Expiration of temporary exemption.

SUMMARY: In this action, EPA is informing the public that the extension of the temporary exemption from the NO_X control requirements of sections 182(f) and 182(b) of the Clean Air Act (the Act) for the Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA) ozone nonattainment areas expired December 31, 1997. The State of Texas decided not to petition for a further exemption on November 24, 1997. The State must now begin expeditious implementation of NO_X Reasonably Available Control Technology (RACT), New Source Review (NSR), Vehicle Inspection/Maintenance (I/M), and conformity requirements.

DATES: Effective February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert R. Sherrow, Jr., Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. The telephone number is 214–665–7237.

SUPPLEMENTARY INFORMATION:

I. Background

On August 17, 1994, the Texas Natural Resource Conservation Commission (TNRCC) submitted to EPA a petition pursuant to section 182(f) which requested that the HGA and BPA nonattainment areas be temporarily exempted by EPA from the NO_X control requirements of section 182(f) of the Act. The State based its petition on the use of an Urban Airshed Modeling (UAM) demonstration showing, pursuant to EPA guidelines, that NO_X reductions would not contribute to attainment in either area because the decrease in ozone concentrations resulting from Volatile Organic Compounds (VOC) reductions alone is equal to or greater than the decrease obtained from NO_X reductions or a combination of VOC and NO_X reductions. The petition for the temporary exemption was approved by EPA and published at 60 FR 19515 (April 19, 1995). For a more detailed discussion of the basis of EPA's approval of this temporary exemption, the reader is referred to this notice.

On March 6, 1996, the State of Texas submitted a petition to EPA which requested that the HGA and BPA nonattainment areas be granted an extension to the temporary exemption from December 31, 1996, to December 31, 1997. The State based its petition on needing additional time to complete further UAM modeling using data from the Coastal Oxidant Assessment for Southeast Texas (COAST) study.

Also submitted with the petition was a revision to previously-adopted NO_X RACT rules (30 Texas Air Control (TAC) 117) which extended the compliance date from May 31, 1997, to May 31, 1999. The State first submitted the NO_X RACT rules to EPA on December 6, 1993.

A revision to the Texas (Nonattainment) New Source Review rule (30 TAC section 116.150), adopted on October 11, 1995, temporarily extended the suspension of the NO_X NSR requirements in HGA and BPA through December 31, 1997. This rule revision was submitted to EPA on November 1, 1995, and was not resubmitted with the petition.

On May 23, 1997, EPA approved the petition for a one-year extension of the temporary exemption of the 182(f) and 182(b) NO_X requirements for the HGA and BPA areas (62 FR 28344) from December 31, 1996, to December 31, 1997, and an extension of the NO_X RACT compliance date until May 31, 1999.

The extension to the temporary exemption expired on December 31, 1997.

II. State's Implementation Requirements

Since the extension of the temporary exemption expired on December 31, 1997, the State is required, according to EPA's approval of the petition for the extension of the temporary exemption, to begin implementing the State's NO_X RACT, NSR, I/M, general and transportation conformity requirements, with NO_X RACT compliance required as expeditiously as practicable but no later than May 31, 1999. Other specific requirements that would become applicable upon expiration are: (1) Any NSR permits that had not been deemed complete prior to January 1, 1998, must comply with the NO_X NSR requirements, consistent with the policy set forth in the EPA's NSR Supplemental Guidance memo dated September 3, 1992, from John Seitz, Director, EPA's Office of Air Quality Planning and Standards; (2) any conformity determination (for either a new or revised transportation plan and Transportation Improvement Program) made after January 1, 1998, must comply with the NO_X conformity requirements; and (3) any I/M vehicle inspection made after January 1, 1998, must comply with the I/M NO_X requirements.

III. State's Implementation Plans

In a letter from Mr. Barry R. McBee, Chairman, TNRCC, to Mr. Jerry Clifford, Acting Regional Administrator, EPA

Region 6, dated November 25, 1997, the State documented its plans for implementing the NO_X requirements.

For NO_X RACT, the State plans to maintain the performance standards contained in its current rule but believes a delay in the compliance date from May 31, 1999, to November 30, 1999, is necessary for facilities to implement the rule. This change will also require an updating of the rule.

For New Source Review, changes in two permitting rules are necessary to update the rules previously submitted. The State plans to expedite these changes to have an effective rule date by April, 1998. The State plans to inform all applicants that during the period January 1, 1998, until the effective date of the rule revision they are obligated to implement Federal nonattainment NSR requirements as a result of the expiration of the temporary 182(f) exemption on December 31, 1997.

For vehicle Inspection and Maintenance, the State and EPA agree that Harris County's current low enhanced I/M program meets EPA's NO_X requirements and no change is needed, and that the BPA area will continue to have no requirements for an I/M program.

For transportation conformity, any conformity determination made before the expiration of the exemption will continue to be a valid determination for three years if no changes are made to transportation plans and programs, and no new SIP is submitted. Any new conformity determinations made after December 31, 1997, must comply with the NO_X provisions of the Federal and State conformity requirements. The State will work with EPA and the HGA and BPA metropolitan planning organizations in ensuring that conformity requirements are met.

The EPA plans to act on the State's NO_X RACT and NSR rules upon the State's submission. The EPA will process the changes to the rules through ''notice and comment'' rulemaking and will consider any public comment on the rules before granting final approval.

Acknowledgment and acceptance in principle by EPA of these implementation plans was conveyed to Mr. Barry R. McBee in a letter from Mr. Jerry Clifford, dated December 22, 1997.

List of Subjects in 40 CFR Part 52

Air pollution controls, Nitrogen oxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 4, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

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

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

Subpart SS—Texas

2. Section 52.2308 is amended by adding paragraph (f) to read as follows:

§ 52.2308 Area-wide nitrogen oxides (NO_X) exemptions.

* * * * *

(f) The extension of the temporary exemption from NO_X control requirements of sections 182(f) and 182(b) of the Clean Air Act for the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas granted on May 23, 1997, expired December 31, 1997. Upon expiration of the extension, the requirements pertaining to NO_X RACT, NSR, I/M, general and transportation conformity will become applicable and the State is expected to implement the requirements as expeditiously as possible.

[FR Doc. 98–3580 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 980202026–8026–01; I.D. 011598C]

Magnuson-Stevens Act Provisions; Technical Amendments

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

ACTION: Final rule, technical amendment.

SUMMARY: NMFS corrects and updates regulations pertaining to general provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This rule corrects references to the Magnuson-Stevens Act, which was amended by the Sustainable Fisheries Act (SFA) in 1996; revises a definition to bring it into conformance with the Magnuson-Stevens Act; and revises terminology to be consistent with the Magnuson-Stevens Act and to reflect a reorganization of NMFS.

DATES: Effective February 12, 1998.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, NMFS, 301/713–2344.

SUPPLEMENTARY INFORMATION: Part 600 of title 50 CFR contains general regulations issued under the authority of the Magnuson-Stevens Act. On October 11, 1996, the President signed into law the SFA, which made numerous amendments to the Magnuson-Stevens Act. Consequently, certain references to that statute in part 600 became incorrect; this rule corrects those references. In addition, the SFA amended the definition of ''optimum,'' with respect to yield from a fishery, which appears at section 3(28) in the Magnuson-Stevens Act. To bring part 600 into conformance with that change, the definition of ''optimum yield'' (OY) in § 600.10 is revised by this rule.

In 1996, the title of the Magnuson Fishery Conservation and Management Act was changed to the Magnuson-Stevens Fishery Conservation and Management Act by Public Law 104–208. Also in 1996, the headquarters offices of NMFS were reorganized and the NMFS Regional Directors were retitled ''Regional Administrators.'' This rule revises part 600 accordingly.

Classification

Because this rule only corrects and updates part 600 for the purposes of public information, it is strictly administrative in nature; no useful purpose would be served by providing prior notice and opportunity for comment on this rule. Accordingly, under 5 U.S.C. 553(b)(B), it is unnecessary to provide such notice and opportunity for comment. Also, because this rule is only administrative in nature and imposes no new requirements or restrictions on the public, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(d)(3), finds it unnecessary to delay its effective date for 30 days.

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: February 5, 1998.

David L. Evans,

Deputy Assistant, Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 600 is amended as follows:

PART 600—MAGNUSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. The part heading is revised to read as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

3. In § 600.10, the definitions of ''Magnuson Act'' and ''Regional Director (RD)'' are removed, definitions for ''Magnuson-Stevens Act'' and ''Regional Administrator'' are added in alphabetical order, and definitions of ''Continental shelf fishery resources'', ''Director'', and ''Optimum yield (OY)'' are revised to read as follows:

§ 600.10 Definitions.

* * * * *

Continental shelf fishery resources means the species listed under section 3(7) of the Magnuson-Stevens Act.

* * * * *

Director means the Director of the Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910.

* * * * *

Magnuson-Stevens Act means the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), formerly known as the Magnuson Act.

* * * * *

Optimum yield (OY) means the amount of fish that:

(1) Will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

(2) Is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and

(3) In the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

* * * * *

Regional Administrator means the Administrator of one of the five NMFS Regions described in Table 1 of § 600.502, or a designee. Formerly known as Regional Director.

* * * * *

4. In § 600.15, paragraph (b)(7) is removed and paragraphs (b)(8) through (b)(13) are redesignated as paragraphs (b)(7) through (b)(12), respectively.

5. In § 600.210, the first sentence of paragraph (a) is revised to read as follows:

§ 600.210 Terms of Council members.

(a) Voting members (other than principal state officials, the Regional Administrators, or their designees) are appointed for a term of 3 years and, except as discussed in paragraphs (b) and (c) of this section, may be reappointed. * * *

* * * * *

6. In § 600.215, the third sentence in paragraph (a)(4) is revised to read as follows:

§ 600.215 Appointments.

(a) * * *

(4) * * * Career and educational history information sent to the Governors should also be sent to the NMFS Office of Sustainable Fisheries.

* * * * *

7. In § 600.230, the first sentence is revised to read as follows:

§ 600.230 Removal.

The Secretary may remove for cause any Secretarially appointed member of a Council in accordance with section 302(b)(6) of the Magnuson-Stevens Act, wherein the Council concerned first recommends removal of that member by not less than two-thirds of the voting members. * * *

8. In § 600.235, the first sentence in paragraph (c) is revised to read as follows:

§ 600.235 Financial disclosure.

* * * * *

(c) By February 1 of each year, Councils must forward copies of the completed disclosure from each current Council member and Executive Director to the Director, Office of Sustainable Fisheries, NMFS. * * *

* * * * *

9. In § 600.310, the first sentence of paragraph (b), and the first sentence of paragraph (f)(3) introductory text are revised to read as follows:

§ 600.310 National Standard 1—Optimum Yield.

* * * * *

(b) * * * The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's multiple purposes and policies, for implementing an FMP's objectives, and for balancing the various interests that comprise the national welfare. * * *

* * * * *

(f) * * *

(3) * * * The Magnuson-Stevens Act's definition of OY identifies three categories of factors to be used in modifying MSY to arrive at OY: Economic, social, and ecological (section 3(21)(b) of the Magnuson-Stevens Act). * * *

* * * * *

10. In § 600.330, the third sentence in paragraph (c)(2) is revised to read as follows:

§ 600.330 National Standard 5—Efficiency.

* * * * *

(c) * * *

(2) * * * In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Magnuson-Stevens Act's limitation on returning economic rent to the public under section 304(d)(1). * * *

11. In § 600.502, the last sentence in paragraph (f)(1), paragraph (g), and Tables 1 and 2 to the section are revised to read as follows:

§ 600.502 Vessel reports.

* * * * *

(f) * * *

(1) * * * The appropriate Regional Administrator or Science and Research Director may accept or reject any correction and initiate any appropriate civil penalty actions.

* * * * *

(g) *Submission instructions for weekly reports.* The designated representative for each FFV must submit weekly reports in the prescribed format to the appropriate Regional Administrator or Science and Research Director of NMFS by 1900 GMT on the Wednesday following the end of the reporting period. However, by agreement with the appropriate Regional Administrator or Science and Research Director, the designated representative may submit weekly reports to some other facility of NMFS.

TABLE 1 TO § 600.502.—ADDRESSES

NMFS regional administrators	NMFS science and research directors	U.S. Coast Guard commanders
Administrator, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298.	Director, Notheast Fisheries Science Center, National Marine Fisheries Service, NOAA, 166 Water St., Woods Hole, MA 02543–1097.	Commander, Atlantic Area, U.S. Coast Guard, 431 Crawford St., Portsmouth, VA 23704.
Administrator, Southeast Region, National Marine Fisheries Service, 9721 Exec. Center Drive N., St. Petersburg, FL 33702.	Director, Southeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149–1003.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York 10004.
Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115.	Director, Northwest Fisheries Science Center, National Marine Fisheries Service, NOAA, 2725 Montlake Blvd. East, Seattle, WA 98112–2097.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, CA 94501.
Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668.	Director, Alaska Fisheries Science Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 4, Seattle, WA 98115–0070.	Commander, Seventeenth Coast Guard District, P.O. Box 25517, Juneau, AK 99802.
Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.	Director, Southwest Fisheries Science Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, CA 92038–0271.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96850.

TABLE 2 TO § 600.502.—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES

Area of responsibility/fishery	National Marine Fisheries Service	U.S. Coast Guard
Atlantic Ocean North of Cape Hatteras	Director, Northeast Science Center, Attn: Observer Program.	Commander, Atlantic Area.
Atlantic Ocean South of Cape Hatteras	Director, Northeast Science Center, Attn: Observer Program.	Commander, Atlantic Area.
Atlantic Tunas, Swordfish, Billfish and Sharks	Director, Office of Sustainable Fisheries	Commander, Atlantic Area.
Gulf of Mexico and Caribbean Sea	Administrator, Southeast Region	Commander, Atlantic Area.
Pacific Ocean off the States of California, Oregon, and Washington.	Administrator, Northwest Region	Commander, Pacific Area.
North Pacific Ocean and Bering Sea off Alaska	Administrator, Alaska Region	Commander, Seventeenth Coast Guard District.
Pacific Ocean off Hawaii and Other U.S. Insular Possessions in the Central and Western Pacific.	Administrator, Southwest Region	Commander, Fourteenth Coast Guard District.

* * * * *

12. In § 600.506, paragraphs (a), (b)(1), (b)(2), and (c)(2); the first sentence of paragraph (f); paragraph (g)(2); the fifth sentence of paragraph (h)(1); the last sentence in paragraph (h)(2)(iii); the last sentence in paragraph (h)(3)(ii); paragraph (j)(1) introductory text; and the first sentence of paragraph (j)(2)(i) are revised to read as follows:

§ 600.506 Observers.

(a) *General.* To carry out such scientific, compliance monitoring, and other functions as may be necessary or appropriate to carry out the purposes of the Magnuson-Stevens Act, the appropriate Regional Administrator or Science and Research Director (see table 2 to § 600.502) may assign U.S. observers to FFV's. Except as provided for in section 201(i)(2) of the Magnuson-Stevens Act, no FFV may conduct fishing operations within the EEZ unless a U.S. observer is aboard.

(b) * * *

(1) The appropriate Regional Administrator or Science and Research Director must be notified immediately of any substitution of vessels or any cancellation of plans to fish in the EEZ for FFV's listed in the effort plan required by this section.

(2) If an arrival date of an FFV will vary more than 5 days from the date listed in the quarterly schedule, the appropriate Regional Administrator or Science and Research Director must be notified at least 10 days in advance of the rescheduled date of arrival. If the notice required by this paragraph (b)(2) is not given, the FFV may not engage in fishing until an observer is available and has been placed aboard the vessel or the requirement has been waived by the appropriate Regional Administrator or Science and Research Director.

(c) * * *

(2) Cause the FFV to proceed to such places and at such times as may be designated by the appropriate Regional Administrator or Science and Research Director for the purpose of embarking and debarking the observer.

* * * * *

(f) * * * In the event funds are not available from Congressional appropriations of fees collected to assign an observer to a foreign fishing vessel, the appropriate Regional Administrator or Science and Research Director will assign a supplementary observer to that vessel. * * *

(g) * * *

(2) The duties of supplementary observers and their deployment and work schedules will be specified by the appropriate Regional Administrator or Science and Research Director.

* * * * *

(h) * * *

(1) * * * Billings for supplementary observer coverage will be approved by the appropriate Regional Administrator or Science and Research Director and then transmitted to the owners and operators of foreign fishing vessels by

the appropriate designated representative. * * *

(2) * * *

(iii) * * * For the purposes of these regulations, the appropriate Regional Administrator or Science and Research Director will designate posts of duty for supplementary observers.

* * * * *

(3) * * *

(ii) * * * The equipment will be specified by the appropriate Regional Administrator or Science and Research Director according to the requirements of the fishery to which the supplementary observer will be deployed.

* * * * *

(j) * * *

(1) *Certification*. The appropriate Regional Administrator or Science and Research Director will certify persons as qualified for the position of supplementary observer once the following conditions are met:

* * * * *

(2) * * *

(i) Each certified supplementary observer must satisfactorily complete a course of training approved by the appropriate Regional Administrator or Science and Research Director as equivalent to that received by persons used as observers by NMFS as either Federal personnel or contract employees. * * *

* * * * *

13. In § 600.615, paragraph (d)(2) is revised to read as follows:

§ 600.615 Commencement of proceedings.

* * * * *

(d) * * *

(2) *Emergency actions*. Nothing in this section will prevent the Secretary from taking emergency action under section 305(c) of the Magnuson-Stevens Act.

14. In § 600.750, the definition of ''report'' is revised to read as follows:

§ 600.750 Definitions.

* * * * *

Report means a document submitted by an FNP in accordance with the Magnuson-Stevens Act.

§§ 600.5, 600.10, 600.105, 600.115, 600.205, 600.215, 600.225, 600.235, 600.245, 600.305, 600.310, 600.320, 600.325, 600.330, 600.340, 600.405, 600.415, 600.501, 600.504, 600.505, 600.506, 600.507, 600.515, 600.518, 600.610, 600.725, 600.730, 600.735, 600.740 [Amended]

15. In addition to the amendments set forth above, in 50 CFR part 600 remove the words ''Magnuson Act'' and add, in their place, the words ''Magnuson-Stevens Act'' in the following places:

(a) Section 600.5(a) and (b) (two occurrences);

(b) Section 600.10, in the definition of ''Advisory group'', in paragraph (3) of the definition of ''Assistant Administrator'', in the definition of ''Council'', in the definition of ''Governing International Fishery Agreement (GIFA)'', in the definition of ''scientific research activity'', in the definition of ''Statement of Organization, Practices, and Procedures (SOPP)'', in the definition of ''stock assessment'', and in paragraph (3) of the definition of ''substantially (affects)'';

(c) Section 600.105(a), (b), and (c);

(d) Section 600.115(a) and (b);

(e) Section 600.205(a) and (b);

(f) Section 600.215(a)(3);

(g) Section 600.225(b)(2);

(h) Section 600.235(a);

(i) Section 600.245(a);

(j) Section 600.305(a)(2) (two occurrences), (a)(3), (c)(1), and (c)(3);

(k) Section 600.310(c)(7)(i), (c)(7)(iii), (f)(1), (f)(2) introductory text, (f)(5), and (h) introductory text;

(l) Section 600.320(c);

(m) Section 600.325(c)(3)(ii);

(n) Section 600.330(c) introductory text, (c)(1), and (c)(2) (two occurrences);

(o) Section 600.340(b)(1) and (b)(2)(iii);

(p) Section 600.405;

(q) Section 600.415(c)(2);

(r) Section 600.501(a)(1), (b) (two occurrences), (e)(1)(i), (e)(1)(v), and (i) (three occurrences);

(s) Section 600.504(a)(1);

(t) Section 600.505(a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(28), and (b)(1);

(u) Section 600.506(h)(3) introductory text;

(v) Section 600.507(a)(4);

(w) Section 600.515;

(x) Section 600.518(e)(1)(iv);

(y) Section 600.610(a)(1);

(z) Section 600.725(a) (two occurrences), (b), (d), (f), (g), (h), (j), (k), and (p) (two occurrences);

(aa) Section 600.730(a);

(bb) Section 600.735 (three occurrences); and

(cc) Section 600.740(a) introductory text; (a)(4), (b), and (c) (four occurrences).

§§ 600.10, 600.205, 600.235, 600.504, 600.505, 600.506, 600.507, 600.511, 600.512, 600.516, 600.518, 600.520, 600.745 [Amended]

16. In addition to the amendments set forth above, in 50 CFR part 600 remove the words ''Regional Director'' and add, in their place, the words ''Regional Administrator'' in the following places:

(a) Section 600.10, in the definition of ''exempted educational activity'';

(b) Section 600.205(a);

(c) Section 600.235(a);

(d) Section 600.504(b)(5);

(e) Section 600.505(a)(8);

(f) Section 600.506(b) introductory text;

(g) Section 600.507(i) (two occurrences);

(h) Section 600.511(c)(1) (two occurrences);

(i) Section 600.512(a) (five occurrences);

(j) Section 600.516(c);

(k) Section 600.518(b)(3) (three occurrences);

(l) Section 600.520(b)(2)(ii), (b)(2)(iii), and (b)(3);

(m) Section 600.745(a) (five occurrences), (b)(1) (four occurrences), (b)(2) introductory text, (b)(2)(viii), (b)(3)(i) introductory text (four occurrences), (b)(3)(ii) (two occurrences), (b)(3)(iii) introductory text, (b)(3)(iv), (b)(3)(v), (c)(2), (d)(1) (three occurrences), (d)(2) introductory text, (d)(2)(x), (d)(3)(i), and (d)(3)(ii) introductory text.

[FR Doc. 98–3601 Filed 2–11–98; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 63, No. 29
Thursday, February 12, 1998

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–194–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that would have required modifying the rudder trim switch and control knob. That proposal was prompted by reports of in-flight uncommanded rudder trim activation due to inadvertent activation of the rudder trim switch, failure of the switch, or incorrect installation of the switch. This new action revises the proposed rule by requiring replacement of the rudder trim switch in the flight compartment with a new switch having a longer shaft; modification of wiring in panel 408VU; and replacement of the control knob with a new knob, as necessary. This actions specified by this new proposed AD are intended to prevent inadvertent and uncommanded rudder trim activation, which could result in yaw and roll excursions and consequent reduced controllability of the airplane.

DATES: Comments must be received by March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–194–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 1, 1997 (62 FR 15431). That NPRM would have required modifying the rudder trim switch and control knob. That proposal was prompted by reports of in-flight uncommanded rudder trim activation due to inadvertent activation of the rudder trim switch, failure of the switch, or incorrect installation of the switch. Such activation, if not corrected, could result in uncommanded yaw/roll excursions and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Proposal

Since the issuance of the originally proposed NPRM, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that the unsafe condition addressed in the NPRM may continue to exist on certain Airbus Model A310 and A300–600 series airplanes that were modified previously in accordance with two of the service bulletins cited in that NPRM:

1. Airbus Service Bulletin A300–27–6027, Revision 2, dated August 22, 1995, or Revision 3, dated March 13, 1996 (for Model A300–600 series airplanes); and
2. Airbus Service Bulletin A310–27–2071, Revision 2, dated August 22, 1995, or Revision 3, dated March 13, 1996 (for Model A310 series airplanes).

The DGAC advises the FAA of two reports indicating that a rudder trim switch that was replaced in accordance with these service bulletins did not return to a centered (neutral) position after release. Because the replacement and modification procedures in these service bulletins do not adequately prevent inadvertent and uncommanded rudder trim activation, the DGAC has issued a new French airworthiness directive, 97–111–219(B), dated May 7, 1997, to correct the unsafe condition.

Airbus has issued two new and two revised service bulletins, as described below. The FAA has determined that

accomplishment of the actions specified in these service bulletins will ensure the appropriate clearance between the rudder trim control knob and panel 408VU, which will correct the identified unsafe condition.

1. Two new Airbus Service Bulletins, A300–27–6037 and A310–27–2084, both dated February 12, 1997, describe procedures for replacement of the existing rudder trim switch with a switch having a new part number, and modification of the wiring in panel 408VU. The new switch, which has a longer shaft, was designed to prevent interference with the panel by ensuring the appropriate clearance between the control knob and the panel.

2. Revisions to Airbus Service Bulletins A300–27–6022, Revision 3 (for Model A300–600 series airplanes), and A310–27–2058, Revision 3 (for Model A310 series airplanes), both dated September 26, 1996, describe procedures for replacement of the rudder trim control knob in panel 408VU, and an inspection to ensure the appropriate clearance between the rudder trim control knob and panel 408VU. The configuration of the knob was changed in Revision 2 of these service bulletins and was proposed in the NPRM.

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

The DGAC classified the Airbus service bulletins as mandatory, and issued French airworthiness directives 95–246–193(B), dated December 6, 1995, and 97–111–219(B), dated May 7, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

The FAA concludes that the new design change to the rudder trim switch and the previous design change to the control knob specified in the service bulletins described previously will reduce the possibility of inadvertent and uncommanded activation of the rudder.

The FAA has determined that, in order to adequately address the identified unsafe condition (inadvertent and uncommanded rudder trim activation), the originally proposed rule must be revised to require the actions specified in the service bulletins described previously, except as described below.

Differences Between Service Bulletins and the Supplemental NPRM

Although Revision 3 of Airbus Service Bulletins A310–27–2058 and A300–27–6022 provides inspection procedures for setting the appropriate clearance between panel 408VU and the rudder trim control knob, this supplemental NPRM does not require such an inspection. The FAA has determined that installation of the new switch will ensure the appropriate clearance between the control knob and panel when the new switch is installed, and that this design change precludes the necessity for an inspection.

Conclusion

Because these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 90 Airbus Model A310 and A300–600 series airplanes of U.S. registry would be affected by this proposed AD.

- Replacement of the rudder trim switch and modification of the wiring would take approximately 7 hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators is estimated to be $37,800, or $420 per airplane.
- Replacement of the rudder trim control knob would take approximately 1 hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $296 per airplane. Based on these figures, the cost impact on U.S. operators is estimated to be $32,040, or $356 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 96–NM–194–AD.

Applicability: Model A310 and A300–600 series airplanes on which Airbus Modifications 8566 and 11662 have not been incorporated, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent and uncommanded rudder trim activation, which could result in yaw and roll excursions and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 90 days after the effective date of this AD, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD.

(1) Replace rudder trim switch, part number (P/N) 097–023–00, in the flight compartment with a new switch, P/N 097–023–01; and modify the wiring in panel 408VU; in accordance with Airbus Service Bulletin A310–27–2084 (for Model A310 series airplanes), and Airbus Service Bulletin A300–27–6037 (for Model A300–600 series airplanes), both dated February 12, 1997.

(2) Replace the rudder trim control knob on the rudder trim switch with a new knob in accordance with Airbus Service Bulletin A310–27–2058, Revision 3, dated September 26, 1996, or Revision 2, dated August 28, 1995 (for Model A310 series airplanes); and Airbus Service Bulletin A300–27–6022, Revision 3, dated September 26, 1996, or Revision 2, dated August 28, 1995 (for Model A300–600 series airplanes).

(b) As of the effective date of this AD, no person shall install in the flight compartment of any airplane a rudder trim switch having P/N 097–023–00.

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

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

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

Note 3: The subject of this AD is addressed in French airworthiness directives 95–246–193(B), dated December 6, 1995, and 97–111–219(B), dated May 7, 1997.

Issued in Renton, Washington, on February 5, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3515 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. This proposal would require a modification of the lapjoint below the chine line at certain fuselage stations. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking in the lapjoint below the chine line at certain fuselage stations, which could result in reduced structural integrity of the fuselage.

DATES: Comments must be received by March 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–186–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–186–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–186–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. The RLD advises that fatigue analysis of Fokker Model F27 series airplanes has shown that the lapjoints below the chine line, between fuselage station 1400 and 16660, are vulnerable to multiple-site fatigue cracking. Such fatigue cracking occurs when the airplane is operated, or has been operated, at 5.5 pounds per square inch (psi) differential cabin pressure, and the affected bottom fuselage skin panels have a thickness of 0.6 millimeters (mm) (between fuselage station 1400 and station 12975) or 0.7 mm (between fuselage station 12975 and station 16660). This condition, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage.

Other Relevant Rulemaking

The FAA has previously issued AD 96–13–07, amendment 39–9675 (61 FR 34718, July 3, 1996), which currently requires repetitive inspections of the subject lapjoints below the chine line of certain fuselage stations. These inspections are conducted as part of the Fokker Model F27 Structural Integrity Program (SIP).

This proposed AD will affect items 53–30–02, 53–30–03, and 53–30–04 of the Fokker Model F27 SIP.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin F27/53–116, dated April 15, 1994, which describes procedures for modification of the lapjoint below the chine line between fuselage stations 1400 and 16660. The modification involves the installation of an external doubler on top of the lapjoint, which would eliminate the need for certain repetitive inspections required by AD 96–13–07. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 94–092 (A), dated May 25, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

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

Differences Between the Proposed AD and the Related Dutch AD

Operators should note that, unlike the parallel Dutch airworthiness directive 94–092(A), dated May 25, 1994, the proposed AD does not provide for an option for operators to adjust the compliance time threshold for the subject modification based on the amount of time the airplane has been operating at a maximum cabin pressure differential of 5.5 psi. The proposed AD would require a fixed threshold for performing the modifications to the lapjoints. The FAA has determined that such adjustments would not address the unsafe condition in a timely manner. However, the FAA acknowledges that the duration of time that the airplane was operated at 5.5 psi differential pressure is a contributing factor in determining the appropriate threshold. Paragraph (d) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

Cost Impact

The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 140 work hours per airplane to accomplish the modification (specified as Part 1 in the referenced service bulletin), at an average labor rate of $60 per work hour. The cost of required parts would be nominal. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $8,400 per airplane.

It would take approximately 300 work hours per airplane to accomplish the modification (specified as Part 2 in the referenced service bulletin), at an average labor rate of $60 per work hour. The cost of required parts would be nominal. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $18,000 per airplane.

It would take approximately 210 work hours per airplane to accomplish the modification (specified as Part 3 in the referenced service bulletin), at an average labor rate of $60 per work hour. The cost of required parts would be nominal. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $12,600 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 96–NM–186–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, serial numbers 10102 through 10375 inclusive, that are operated or have been operated at a maximum cabin pressure differential of 5.5 pounds per square inch (psi), certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the lapjoint below the chine line at certain fuselage stations, which could result in reduced structural integrity of the fuselage, accomplish the following:

(a) For airplanes on which Fokker Service Bulletin F27/53–68, dated July 4, 1966, or Revision 1, dated July 19, 1967, has not been

accomplished: Prior to the accumulation of 32,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later, modify the lapjoint below the chine line between fuselage station 1400 and station 5050, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/53–116, dated April 15, 1994. Accomplishment of this modification and accomplishment of the requirements of paragraph (b) of this AD, constitutes terminating action for the repetitive inspection requirements of items 53–30–02 and 53–30–03 of the Fokker Model F27 Structural Inspection Program (SIP), as required by AD 96–13–07, amendment 39–9675.

(b) For airplanes on which Fokker Service Bulletin F27/53–85, dated February 16, 1970, has not been accomplished: Prior to the accumulation of 32,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later, modify the lapjoint below the chine line between fuselage station 5050 and station 12975, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/53–116, dated April 15, 1994. Accomplishment of this modification and accomplishment of the requirements of paragraph (a) of this AD, constitutes terminating action for the repetitive inspection requirements of items 53–30–02 and 53–30–03 of the Fokker Model F27 SIP, as required by AD 96–13–07.

(c) For airplanes on which Fokker Service Bulletin F27/53–85, dated February 16, 1970, has not been accomplished: Prior to the accumulation of 56,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later, modify the lapjoint below the chine line between fuselage station 12975 and station 16660, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin F27/53–116, dated April 15, 1994. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of item 53–30–04 of the Fokker Model F27 SIP, as required by AD 96–13–07.

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

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

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

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 94–092 (A), dated May 25, 1994.

Issued in Renton, Washington, on February 5, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3514 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–76–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA Groupe Aerospatiale Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA Groupe Aerospatiale Model TBM 700 airplanes. The proposed action would require inspecting the elevator trim tab for cracks, and replacing any elevator trim tab part found to have cracks. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to prevent cracks in the elevator trim tab fitting, which, if not detected and corrected, could result in separation of the elevator trim tab and loss of control of the airplane.

DATES: Comments must be received on or before March 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, *Attention:* Rules Docket No. 97–CE–76–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone (33) 62.41.73.00; facsimile (33) 62.41.76.54; or the Product Support Manager, SOCATA Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 964–6877; facsimile: (954) 964–1668. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, Suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–76–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–76–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain SOCATA Groupe Aerospatiale TBM 700 airplanes. The DGAC reports that cracks in the elevator trim tab were found during routine maintenance inspections.

Investigation on the cause of the cracking showed that a particular batch of elevator trim tab fittings were defective from the manufacturer. Continued progression of the cracks in these elevator trim tab fittings could reduce the structural soundness of the elevator trim tab. This condition, if not corrected, could result in separation of the elevator trim tab from the airplane and cause loss of control of the airplane.

Relevant Service Information

SOCATA has issued Mandatory Service Bulletin No. 70–079–55, dated April 1996, which specifies procedures for inspecting for cracks in the elevator trim tab fittings and replacing any cracked part.

The DGAC classified this service bulletin as mandatory and issued French AD 96–118(B), dated June 19, 1996, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

The SOCATA Model TBM 700 airplane is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC, reviewed all available information including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other SOCATA Model TBM 700 series airplanes of the same type design registered in the United States, the proposed AD would require inspecting the elevator trim tab fittings for cracks using a dye penetrant method, and replacing any cracked part. Accomplishment of the proposed inspection and replacement would be in accordance with SOCATA TBM Aircraft Service Bulletin No. SB 70–079–55, dated April 1996.

Cost Impact

The FAA estimates that 16 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $200 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,160 or $260 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

SOCATA Groupe Aerospatiale: Docket No. 97–CE–76–AD.

Applicability: Model TBM 700 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent cracks in the elevator trim tab fitting, which, if not detected and corrected, could result in separation of the elevator trim tab and loss of control of the airplane, accomplish the following:

(a) Inspect the left-and right-hand elevator trim tab fittings for cracks using a dye penetrant aerosol method in accordance with the Accomplishment Instructions section in SOCATA TBM Aircraft Service Bulletin (SB) No. 70–079–55, dated April, 1996.

(b) If cracks are found, prior to further flight, replace the cracked part with one of improved design in accordance with the Accomplishment Instructions section in SOCATA TBM Aircraft SB No. 70–079–55, dated April, 1996.

(c) No person may install an elevator trim tab fitting manufactured between January 1, 1993 and February 29, 1996, on any of the affected airplanes.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, Suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Questions or technical information related to Service Bulletin No. 70–079–55, issued April 1996, should be directed to SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone (33) 62.41.73.00; facsimile 62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 964–6877; facsimile: (954) 964–1668. This service information may be examined at the FAA, Central Region, Office of the

Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in French AD 96–118(B), dated June 19, 1996.

Issued in Kansas City, Missouri, on February 4, 1998.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3513 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–104–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Model ASK–21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Alexander Schleicher (Schleicher) Model ASK–21 sailplanes. The proposed action would require inspecting the S-shaped rudder pedal tube for displacement, and correcting any displacement of the plastic tube. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent rudder control jamming, which, if not corrected, could result in loss of directional control of the sailplane.

DATES: Comments must be received on or before March 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–104–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–104–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–104–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on certain Schleicher Model ASK–21 sailplanes. The LBA reports that the plastic tube in the S-shaped rudder pedal tube is slipping out of the rudder pedal tube and causing the rudder pedal to jam. This condition, if not corrected, could result in loss of directional control of the sailplane.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 20, dated October 16, 1987, which specifies procedures for inspecting the plastic S-shaped rudder pedal tube for displacement. If the tube is displaced, the technical note requires that the displacement of the plastic tube be corrected.

The LBA classified this technical note as mandatory and issued AD 88–2 Schleicher, dated January 18, 1988, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

The Alexander Schleicher Model ASK–21 sailplanes are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information including the service information referenced above, and determined that AD action is necessary for sailplanes of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model ASK–21 sailplanes of the same type design registered in the United States, the proposed AD would require inspecting the plastic S-shaped rudder pedal tube for displacement. If the rudder tube is displaced, the proposed action would require correcting the placement of the plastic S-shaped rudder pedal tube. Accomplishment of the proposed inspection would be in accordance with the Actions sections 1.1, 1.2, and 1.3 of Alexander Schleicher Technical Note No. 20, dated October 16, 1987.

Proposed Compliance Time

The proposed action, the LBA AD, and the Alexander Schleicher Technical Note No. 20, dated October 16, 1987, differ on compliance time. The LBA AD and the Technical Note require that the inspection for displacement of the plastic tube be accomplished prior to further flight.

The FAA is proposing a calendar compliance time instead of hours time-in-service (TIS) because the service history on the U.S.-registered Alexander Schleicher Model ASK–21 sailplanes does not warrant a need for immediate compliance. Also, the average monthly usage of the affected sailplanes varies throughout the fleet. For example, one owner may operate the sailplane 25 hours TIS in one week, while another operator may operate the sailplane 25 hours TIS in one year. In order to ensure that all of the affected sailplanes have been inspected for displacement of the plastic S-shaped rudder tube and any displacement has been corrected within a reasonable amount of time, the FAA is proposing a compliance time of 6 calendar months.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $5 (for glue) per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,750 or $125 per sailplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schliecher: Docket No. 97–CE–104–AD.

Applicability: Model ASK–21 sailplanes (serial numbers 21001 through 21345), certificated in any category.

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

Compliance: Required within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent rudder control jamming, which, if not corrected, could result in loss of directional control of the sailplane, accomplish the following:

(a) Inspect the plastic S-shaped rudder pedal tube for displacement in accordance with the Actions sections 1.1, 1.2, and 1.3 of Alexander Schleicher Technical Note No. 20, dated October 16, 1987.

(b) If there is any displacement of the plastic S-shaped rudder pedal tube, prior to further flight, correct the placement in accordance with the Actions sections 1.1, 1.2, and 1.3 of Alexander Schleicher Technical Note No. 20, dated October 16, 1987.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to Alexander Schleicher Technical Note No. 20, dated October 16, 1987, should be directed to Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD No. 88–2 Schleicher, dated January 18, 1988.

Issued in Kansas City, Missouri, on February 5, 1998.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3519 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–103–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Model ASK–21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Alexander Schleicher Model ASK–21 sailplanes that have certain modifications installed. The proposed action would require changing the sailplane flight manual's weight and balance information. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent the operator from using inaccurate weight and balance information provided in the sailplane flight manual (SFM), which, if not corrected, could lead to hazardous flight conditions.

DATES: Comments must be received on or before March 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–103–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–103–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–103–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified the FAA that an unsafe condition may exist on Alexander Schleicher Model ASK–21 sailplanes that are equipped with certain modification provided in Alexander Schleicher technical note (TN) 3 or TN 7. These technical notes are optional modifications that include the procedures for installing a removable ballast in the sailplane. The LBA reports that the conversion of kilograms to pounds on the trim weights of the Alexander Schleicher Model ASK–21 sailplane was miscalculated at the factory for the sailplanes with the modifications incorporated. Therefore, the U.S.-FAA version of the trim weights information provided in the SFM may lead to loading the sailplane outside the center of gravity. These conditions, if not corrected, could result in hazardous flight conditions.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 13a, dated June 4, 1984, which specifies procedures for changing the sailplane flight manual (SFM) by removing page 2 (dated May 16, 1984) and page 13 (dated February 16, 1984), and inserting a new page 2 and page 13, both dated June 4, 1984.

The LBA classified this service bulletin as mandatory and issued German AD 84–32/2 Schleicher, dated June 12, 1984, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

The Alexander Schleicher Model ASK–21 sailplane is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA, reviewed all available information, including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model ASK–21 sailplanes of the same type design registered in the United States, the proposed AD would require changing the SFM by removing and replacing two pages referencing the trim weight information. Accomplishment of the proposed installation would be in accordance with the Action section of Alexander Schleicher Technical Note No. 13a, dated June 4, 1984.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. There are no parts required for the proposed action. The proposed action may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Based on these figures, there is no cost impact of the proposed AD on U.S. operators.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules

Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schleicher: Docket No. 97–CE–103–AD.

Applicability: Model ASK–21 sailplanes, all serial numbers, certificated in any category, that are equipped with the modifications in Alexander Schleicher Technical Note (TN) 3 or TN 7.

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

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent the operator from using inaccurate weight and balance information provided in the sailplane flight manual (SFM), which, if not corrected, could lead to hazardous flight conditions, accomplish the following:

(a) Remove page 2 (dated May 16, 1984) and page 13 (dated February 16, 1984) from the Alexander Schleicher Model ASK–21 SFM, and replace these pages with new pages 2 and 13, both dated June 4, 1984, in accordance with Alexander Schleicher ASK–21 Technical Note No. 13a, dated June 4, 1984.

(b) Incorporating the SFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to Alexander Schleicher Technical Note No. 13a, dated June 4, 1984, should be directed to Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD No. 84–32/2 Schleicher, dated June 12, 1984.

Issued in Kansas City, Missouri, on February 4, 1998.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3518 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–35–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Models PA–23 (PA–23–150), PA–23–160, PA–23–235, and PA–23–250 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would have required installing external fuel ramp assemblies on The New Piper Aircraft, Inc. (Piper) Models PA–23 (PA–23–150), PA–23–160, PA–23–235, and PA–23–250 airplanes, and incorporating pilots' operating handbook (POH) revisions for Piper Models PA–23 (PA–23–150), and PA–23–160 airplanes. That proposed AD would have superseded AD 92–13–04, which currently requires preflight draining procedures on Piper Models PA–23 (PA–23–150) and PA–23–160 airplanes. The proposed AD was the result of reports of water-in-the-fuel on the affected airplanes, even on those where the airplane owners/operators had accomplished preflight draining procedures. The actions specified in the proposed AD are intended to assist in eliminating water in the fuel tanks, which could result in rough engine operation or complete loss of engine power. Comments received on the proposal specify an additional alternative to the proposed AD, and the Federal Aviation Administration (FAA) has determined that this alternative should be added to the proposal. Based upon these comments on the original proposal and the amount of time that has elapsed since issuance of this proposal, the FAA has determined that the comment period for the proposal should be reopened and the public should have additional time to comment.

DATES: Comments must be received on or before April 13, 1998.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FFC Engineering Specification 2810–002, Revision A, dated March 21, 1995, may be obtained from Floats & Fuel Cells, 4010 Pilot Drive, suite 3, Memphis, Tennessee 38118. Piper Service Bulletin (SB) No. 827A, dated November 4, 1988, may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. The instructions included with Transamerican Enterprises, Inc. TAE102688 Piper PA 23 Fuel Cell Drain Installation, dated September 30, 1996, may be obtained from Transamerican Enterprises, Inc., 6778 Skyline Drive, Delray Beach, Florida 33446. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne A. Shade, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; *telephone:* (770) 703–6094; *facsimile:* (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this supplemental notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–35–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of Supplemental NPRM's

Any person may obtain a copy of this supplemental NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Models PA–23 (PA–23–150), PA–23–160, PA–23–235, and PA–23–250 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 19, 1995 (60 FR 48433). The action proposed to supersede AD 92–13–04, Amendment 39–8274, with a new AD that would:

—retain the preflight draining procedures required by AD 92–13–04 to require incorporating pilots' operating handbook (POH) revisions for Piper Models PA–23 (PA–23–150) and PA–23–160 airplanes that are not equipped with a dual fuel drain kit, part number (P/N) 765–363 (unless already accomplished). The POH revisions are included in Piper SB No. 827A, dated November 4, 1988;

—require installing external fuel ramp assemblies on all the affected airplanes in accordance with FFC Engineering Specification 2810–002, Revision A, dated March 21, 1995; and

—delay the compliance time for airplanes with Piper Fuel Tank Wedge Kit, part number 599–367, incorporated in accordance with Piper SB 932A, dated August 30, 1990, until a new fuel tank is installed.

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

Comment No. 1: No Need for AD Action

Thirty seven commenters claim that no AD is required because, if current procedures were followed, the potential for water in the fuel tank would be reduced, if not eliminated. The commenters state that the primary procedures are properly maintaining the fuel cap and seals, accomplishing proper pre-flight inspections of the fuel, and filling the fuel tanks after each flight.

The FAA does not concur. Although accomplishing the above-referenced procedures will possibly reduce the risk of water entering the fuel tank, the FAA does not believe that the design of the fuel tank installation allows for the drainage of all the water in the tank. This is caused by a low spot inboard of the aft corner of the tank when the airplane is parked in the normal attitude, which is not accessible with the current drainage systems. Therefore, the FAA has determined that a design change is required to allow complete drainage of all water in the fuel tanks. No changes to the NPRM have been made as a result of these comments.

Comment Issue No. 2: Change the Airplane Attitude When Parked

Two commenters request that, instead of requiring the proposed actions, the FAA require an operational procedure to change the airplane attitude so that the airplane would be parked in a nose-down position. This would force all the fluid in the fuel tank toward the forward section of the tank, which could then be accessed with the current drainage system.

The FAA concurs that this procedure would help the situation, but it would not resolve the design deficiency. Therefore, this operational procedure would only provide a similar benefit as the current procedures for operation and maintenance. The FAA will add a note in the proposed AD encouraging operators of the affected airplanes to change the airplane attitude when the airplane is parked.

Comment Issue No. 3: Require AD Only When New Tanks Are Installed

Two commenters believe that the FAA should only require an AD when new fuel tanks are installed. These commenters state that, since no life limits are established for the fuel tanks, the tanks will not be flexible enough to handle the moving around that will happen during the installation of other equipment. Therefore, incorporating either design change proposed in the NPRM without replacing the tanks could increase the risk of fuel leaks from the tanks.

The FAA concurs. Each design change procedure requires inspecting the tank to determine if the tank needs to be replaced or overhauled to a serviceable condition. Although the NPRM did not discuss replacement or overhaul of the fuel tanks, these requirements were incorporated within the procedures of the design change. No changes to the NPRM have been made as a result of these comments.

Comment Issue No. 4: Drain Valve Instead of External Fuel Ramp Assemblies

Two commenters believe that utilizing a simple drain valve in the low spot of the fuel tanks would solve the problem rather than requiring the installation of external fuel ramp assemblies. The commenters state that placing this drain valve in the low spot would cause the least amount of stress on the fuel tank and eliminate any future questions about additional wrinkles that occur through installation of the external fuel ramp assemblies.

The FAA concurs. Installing a drain valve in the low spot of the fuel tanks will be included as an option of compliance with the proposed rule. This installation would be accomplished in accordance with the instructions included with Transamerican Enterprises, Inc. TAE102688 Piper PA 23 Fuel Cell Drain Installation, dated September 30, 1996.

Comment Issue No. 5: Cost Estimate Not Representative of Airplane Fleet

Fourteen commenters state that most of the affected airplanes have configurations representative of a four fuel tank installation, and most would need overhaul or replacement of the fuel tanks. These commenters request that the FAA change the estimate of the cost impact to the public to reflect a four-tank installation rather than a two-tank installation, including overhaul costs.

The FAA concurs that the estimate of the cost impact on the public should be written to reflect the airplane's tank configuration (two or four tanks). The FAA will change the estimate of the cost impact to reflect a per tank cost, with a total given for a two-tank configuration and a total given for a four-tank configuration. The FAA has no way of determining how many tanks will need to be overhauled or replaced, and believes that many will not need to be overhauled or replaced. Therefore, overhaul or replacement costs for the tanks are not included in the estimate of the cost impact to the public.

Comment Issue No. 6: External Fuel Ramp Assembly Installation Could Cause Wrinkles

Sixteen commenters question the effectiveness of the external fuel ramp assembly installation from the standpoint that this modification could cause wrinkles in the fuel tanks. Water could then become trapped in the wrinkles that form.

The FAA concurs that water could become trapped in any wrinkles that form in the fuel tanks. However, the FAA has determined that, if fuel tank overhauls, replacements, and modifications are accomplished in accordance with the required established procedures and standard industry practice, then wrinkles in the fuel tanks should not form after installing these external fuel ramp assemblies. As previously noted, the FAA is including the placement of a drain valve in the fuel tanks as an option over installing the external fuel ramp assemblies.

The Supplemental NPRM

Based upon the amount of time that has elapsed since issuance of the NPRM, the FAA has determined that the changes discussed above should be incorporated into the proposed rule and the comment period for the NPRM should be reopened and the public should have additional time to comment.

Cost Impact

The FAA estimates that 6,973 airplanes in the U.S. registry would be affected by the proposed installation. The following gives cost estimates for airplanes with a two-tank configuration and a four-tank installation:

—*Two-tank Configuration:* It would take approximately 10 workhours per airplane to accomplish the proposed installation at an average labor rate of approximately $60 an hour. Parts cost approximately $400 per airplane ($200 per tank × two tanks per airplane). Based on these figures of all affected airplanes having two-tank configurations, the total cost impact of the proposed installation on U.S. operators is estimated to be $6,973,000, or $1,000 per airplane.

—*Four-tank Configuration:* It would take approximately 20 workhours per airplane to accomplish the proposed installation at an average labor rate of approximately $60 an hour. Parts cost approximately $800 per airplane ($200 per tank × four tanks per airplane). Based on these figures of all affected airplanes having four-tank configurations, the total cost impact of the proposed installation on U.S. operators is estimated to be $13,946,000, or $2,000 per airplane.

These figures are based on the presumption that no affected airplane owner/operator has installed external fuel ramp assemblies. No fuel ramp assemblies have been distributed to the owners/operators of the affected airplanes.

In addition, incorporating the POH revisions as proposed would be required for approximately 2,046 airplanes in the U.S. registry. Since an owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this proposed action, the only cost impact upon the public is the time it takes to incorporate these POH revisions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 92–13–04, Amendment 39–8274 (57 FR 24938; June 12, 1992), and by adding a new AD to read as follows:

The New Piper Aircraft, Inc.: Docket No. 95–CE–35–AD. Supersedes AD 92–13–04, Amendment 39–8274.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial No.
PA–23 (PA–23–150), and PA–23–160	23–1 through 23–2046.
PA–23–235	27–505 through 27–622.
PA–23–250	27–1 through 27–7405476 and 27–7554001 through 27–8154030.

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

Compliance: Required with whichever of the following is applicable:

• For airplanes that do not have Piper Fuel Tank Wedge Kit, part number 599–367, incorporated in accordance with Piper Service Bulletin (SB) 932A, dated August 30, 1990: Within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished; or

• For airplanes that do have Piper Fuel Tank Wedge Kit, part number 599–367, incorporated in accordance with Piper SB 932A, dated August 30, 1990: Upon installation of a new fuel tank.

To assist in eliminating water in the fuel tanks, which could result in rough engine operation or complete loss of engine power, accomplish the following:

(a) For all of the affected model and serial number airplanes, accomplish one of the following:

(1) Install external fuel ramp assemblies in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Floats and Fuel Cells (FFC) Engineering Specification 2810–002, Revision A, dated March 21, 1995; or

(2) Install a fuel tank drain valve in accordance with the instructions included with Transamerican Enterprises, Inc. TAE102688 Piper PA 23 Fuel Cell Drain Installation, dated September 30, 1996.

(b) For all of the affected Models PA–23 (PA–23–150), and PA–23–160 airplanes that do not have a dual fuel drain kit, part number (P/N) 765–363, installed in accordance with Piper SB 827A, dated November 4, 1988, incorporate, into the Owners Handbook and Pilots' Operating Handbook, paragraphs 1 through 5 of the *Aircraft Systems Operating Instructions* that are contained in Part I of Piper SB 827A, unless already accomplished (compliance with superseded AD 92–13–04).

Note 2: Paragraphs 6 and 7 of the *Handling and Servicing* instructions that are contained in Part I of Piper SB No. 827A, dated November 4, 1988, are covered by AD 88–21–07 R1.

(c) For all affected Models PA–23 (PA–23–150) and PA–23–160 airplanes equipped with non-baffled fuel cells, incorporating Piper Fuel Tank Wedge Kit, P/N 599–367, in accordance with Piper SB 932A, dated August 30, 1990, may be accomplished in place of either of the actions required by paragraph (a) of this AD.

Note 3: Operators of the affected airplanes are encouraged to change the airplane attitude so that the airplane is parked in a nose-down position. This could aid in drainage and help assist in eliminating water in the fuel.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 92–13–04 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) All persons affected by this directive may obtain copies of the Engineering Specification 2810–002, Revision A, dated March 21, 1995, upon request to Floats & Fuel Cells, 4010 Pilot Drive, suite 3, Memphis, Tennessee 38118. The instructions included with Transamerican Enterprises, Inc. TAE102688 Piper PA 23 Fuel Cell Drain Installation, dated September 30, 1996, may be obtained from Transamerican Enterprises, Inc., 6778 Skyline Drive, Delray Beach, Florida 33446. Piper SB No. 827A, dated November 4, 1988, may be obtained upon request from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. These documents may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 92–13–04, Amendment 39–8274.

Issued in Kansas City, Missouri, on February 4, 1998.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3517 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 255

RIN 3220–AB34

Recovery of Overpayments

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend its regulations regarding recovery of overpayments to explain what actuarial tables and interest rates are used to calculate an actuarial adjustment in an individual's annuity in order to recover an overpayment of benefits. The regulation also adds a provision to explain when an actuarial adjustment in an annuity takes effect when an annuity is paid by electronic funds transfer (EFT).

DATES: Comments shall be submitted on or before April 13, 1998.

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

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

SUPPLEMENTARY INFORMATION: Section 255.8 of the Board's regulations (62 FR 64164) provides for recovery of an overpayment by means of an actuarial adjustment. In accordance with this provision, an overpayment may be recovered by permanently reducing the annuity payable to the individual from whom recovery is sought. The calculation of the reduction is performed using actuarial tables. The current authority for the use of these tables is contained in a Board Order which is not readily available to the public. This proposed amendment would add language specifying that the Board will use the tables and interest rate adopted in accordance with the triennial evaluation of the railroad retirement trust funds as required by section 15(g) of the Railroad Retirement Act.

Where an annuity is paid by check, an actuarial reduction takes effect, and the overpayment is recovered, upon negotiation of the first check which reflects the adjustment. The Board proposes to add language to, provide that, in the case of an annuity paid by electronic funds transfer, the adjustment is effective when the first payment reflecting the actuarially adjusted rate is deposited.

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

List of Subjects in 20 CFR Part 255.8

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, title 20, part 255 of the Code

of Federal Regulations is proposed to be amended as follows:

PART 255—RECOVERY OF OVERPAYMENTS

1. The authority citation for part 255 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5); 45 U.S.C. 231(i).

2. Section 255.8 is revised to read as follows:

§ 255.8 Recovery by adjustment in connection with subsequent payments.

(a) Recovery of an overpayment may be made by permanently reducing the amount of any annuity payable to the individual or individuals from whom recovery is sought. This method of recovery is called an actuarial adjustment of the annuity. The Board cannot require any individual to take an actuarial adjustment in order to recover an overpayment nor is an actuarial adjustment available as a matter of right. An actuarial adjustment becomes effective and the debt is considered recovered when, in the case of an individual paid by electronic funds transfer, the first annuity payment reflecting the annuity rate after actuarial adjustment is deposited to the account of the overpaid individual, or, in the case of an individual paid by check, the first annuity check reflecting the annuity rate after actuarial adjustment is negotiated.

Example. An annuitant agrees to recovery of a $5,000 overpayment by actuarial adjustment. However, the annuitant dies before negotiating the first annuity check reflecting the actuarially-reduced rate. The $5,000 is not considered recovered. If the annuitant had negotiated the check before he died, the $5,000 would be considered fully recovered.

(b) In calculating any adjustment under this section, beginning with the first day of January after the tables and long-term or ultimate interest rate go into effect under section 15(g) of the Railroad Retirement Act (the triennial evaluation), the Board shall use those tables and long-term or ultimate interest rate.

Dated: February 4, 1998.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–3598 Filed 2–11–98; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57 and 75

RIN 1219–AA94

Safety Standards for the Use of Roof-Bolting Machines in Underground Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Extension of comment period.

SUMMARY: MSHA is extending the comment period on its advance notice of proposed rulemaking addressing the use of roof-bolting machines in underground mines.

DATES: Submit all comments on or before March 9, 1998.

ADDRESSES: Comments may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: comments@msha.gov. Comments by fax must be clearly identified as such and sent to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances at (703) 235–1910.

SUPPLEMENTARY INFORMATION: On December 9, 1997, MSHA published a notice in the **Federal Register** (62 FR 64789), requesting comments on the advance notice of proposed rulemaking (ANPRM) relating to Safety Standards for the Use of Roof Bolting Machines in underground mines. MSHA published the notice to afford an opportunity for interested persons to comment on the ANPRM and for commenters to provide additional information and data on machine design, operating procedures, and miners' experiences with roof-bolting machines.

The comment period was scheduled to close on February 9, 1998; however, in response to commenters' requests for additional time to prepare their comments, MSHA is extending the comment period until March 9, 1998. The Agency believes that this extension will provide sufficient time for all interested parties to review and comment on the ANPRM. All interested parties are encouraged to submit their comments on or prior to March 9, 1998.

Dated: February 6, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–3563 Filed 2–11–98; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC24

Establishing Oil Value for Royalty Due on Indian Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the regulations to establish the value for royalty purposes of oil produced from Indian leases and establish a new Minerals Management Service (MMS) form for collecting value and value differential data. These changes would decrease reliance on oil posted prices and use more publicly available information.

DATES: Comments must be submitted on or before April 13, 1998.

ADDRESSES: Mail written comments, suggestions, or objections regarding the proposed rule to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Denver Federal Center, Denver, Colorado 80225; or e:Mail David__Guzy@mms.gov. MMS will publish a separate notice in the **Federal Register** indicating dates and locations of public hearings regarding this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385, e:Mail David__Guzy@mms.gov, Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are David A. Hubbard of Royalty Management Program (RMP), Lakewood, Colorado, and Peter

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I. Introduction

On December 20, 1995, MMS published an Advance Notice of Proposed Rulemaking about possible changes to the rules for royalty valuation of oil from Federal and Indian leases (60 FR 65610). The intent of the changes was to decrease reliance on oil posted prices and to develop valuation rules that better reflect market value. MMS requested comments regarding the possible changes.

MMS used various sources of information to develop the proposed rule. In addition to comments received on the Advance Notice of Proposed Rulemaking, MMS attended a number of presentations by crude oil brokers and refiners, commercial oil price reporting services, companies that market oil directly, and private consultants knowledgeable in crude oil marketing. MMS's deliberations were aided greatly by a wide range of expert advice and direct consultations MMS held with various Indian representatives.

The Department of the Interior's practice is to give the public an opportunity to participate in the rulemaking process. Anyone interested may send written comments, suggestions, or objections regarding this proposed rule to the location cited in the **ADDRESSES** section of this preamble. We will post public comments after the comment period closes on the Internet at http://www.rmp.mms.gov or contact David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385.

II. General Description of the Proposed Rule

MMS's existing regulations for valuing crude oil for royalty purposes are at 30 CFR part 206. Basically, the same regulations apply to Federal and Indian leases. These rules rely primarily on posted prices and prices under arm's-length sales to value oil. Recently, posted prices have become increasingly suspect as a fair measure of market value. As a result, for Federal lease production, MMS proposed new valuation rules that place substantial reliance on crude oil futures prices on the New York Mercantile Exchange (NYMEX). See 62 FR 3742 (Jan. 24, 1997). Because of the different terms of Indian leases, MMS is proposing separate rules for Indian oil valuation.

The proposed rulemaking would add more certainty to valuation of oil produced from Indian leases and eliminate any direct reliance on posted prices. Most Indian leases include a ''major portion'' provision, which says value is the highest price paid or offered at the time of production for the major portion of oil production from the same field. To lessen the current reliance on posted prices and to better accommodate the major portion provision, the proposed rule requires that royalty value be based on the highest of three different values: (1) A value based on NYMEX futures prices adjusted for location and quality differences; (2) the lessee's or its affiliate's gross proceeds adjusted for appropriate transportation costs; and (3) an MMS-calculated major portion value based on prices reported by lessees and purchasers in MMS-designated areas typically corresponding to reservation boundaries.

Because much Indian oil is disposed of under exchange agreements, specific guidance for applying the valuation criteria are included for these dispositions: (1) if the lessee or its affiliate disposes of production under an exchange agreement and then sells at arm's length the oil it receives in return, royalty value would be the resale price adjusted for appropriate quality differentials and transportation costs (unless the NYMEX or major portion values are higher); and (2) if the lessee or its affiliate disposes of production under an exchange agreement but refines rather than sells the oil it receives in return, royalty value would be the NYMEX value (unless the major portion value is higher).

The lessee would initially report royalties based on the higher of the NYMEX value or its gross proceeds. After MMS does its major portion calculation for the production month, explained below, the lessee would revise its initial royalty value if the major portion value were higher.

Adjustments for location and quality against the index values are limited to these components:

(1) A location and/or quality differential between the index pricing point (West Texas Intermediate at Cushing, Oklahoma) and the appropriate market center (for example, West Texas Intermediate at Midland, Texas, or Wyoming Sweet at Guernsey, Wyoming), calculated as the difference between the average monthly spot prices published in an MMS-approved publication for the respective locations; and either;

(2) A rate either published by MMS or contained in the lessee's arm's-length exchange agreement representing location and/or quality differentials between the market center and the boundary of the designated area (defined term—usually an Indian reservation); or

(3) Where oil flows to the market center, and as determined under the existing allowance rules, the actual transportation costs to the market center from the designated area.

Calculation of differentials could vary if the lessee takes its production directly to its own refinery and the movement in no way approximates movement to a market center.

MMS would calculate and publish the rate from the market center to the designated area based on specific information it would collect on a new form: Form MMS–4416, Indian Crude Oil Valuation Report. This form would also assist MMS in verifying data used to calculate major portion values. It is attached to this notice of proposed rulemaking as Appendix A. MMS requests commenters to provide comments on this form according to the information under the Paperwork Reduction Act in part IV, Procedural Matters, of this notice.

MMS will verify during the first 6 months after the effective date of this rule that the values determined by this rule are replicating actual market prices and satisfying Indian lease terms. Comments on how best to perform this analysis are also requested.

In the next section, we describe the major regulatory changes proposed in this rulemaking. The proposed changes for valuing production are substantive. But some sections, particularly those involving transportation allowances, remain mostly the same. Also, to clarify and simplify the rules, MMS is incorporating many changes that are not substantive but are an effort to implement concepts of *plain English*.

III. Section-by-Section Analysis

30 CFR Part 206

MMS proposes to amend part 206, Subpart B—Indian Oil as described below. Some of the provisions would be largely the same as in the existing rules, but would be rewritten for clarity.

Section 206.50 Purpose and Scope.

This section's contents would remain the same except for clarifications. MMS rewrote it in plain English to improve clarity.

Section 206.51 Definitions.

MMS would retain most of the definitions in § 206.51. Many of those retained were rewritten to reflect *plain English*. New definitions to support the revised valuation procedures are proposed for: *Designated area, Exchange agreement, Index pricing, Index pricing point, Location*

differential, Major portion, Market center, MMS-approved publication, NYMEX, Quality differential, Sale, and *Settle price.* The definition of *Allowance* would be amended and captured under *Transportation allowance.* The definition of *Lessee* would be amended to include all of a company's affiliates, including its production, refining, and marketing arms. The term ''lessee'' could include multiple parties to a transaction involving oil sales from Indian leases. For example, it could include the lessee of record, the lessee of record's marketing affiliate, the operator, and the purchaser, if the purchaser were paying MMS royalties. Thus, when the term ''lessee'' is used in the proposed regulations and this preamble, it is used expansively and refers to all persons that are lessees under the proposed definition. For example, if the proposed regulations require the lessee to retain all data relevant to the determination of royalty value, this requirement would apply to the producer, the marketing arm and the purchaser, if the purchaser paid MMS royalties. We will discuss the new and amended definitions below where they appear in the regulatory text.

The proposed rule would remove the definitions of *Marketing affiliate, Net-back method, Oil shale, Posted price, Processing, Selling arrangement* and *Tar sands* because they no longer relate to how most crude oil is marketed or to the structure of the proposed rules. The definition of *Like-quality lease products* also would be revised under a new definition of *Like-quality oil* to support the new valuation publications. We will discuss this definition below where it appears in the regulatory text.

Section 206.52 How Does a Lessee Calculate Royalty Value for Oil?

This section would explain how you, as a *lessee,* a defined term, must calculate the value of oil production for royalty purposes. It is the principal valuation section of the proposed rules.

The current Indian oil valuation procedures rely heavily on posted prices and contract prices. Since many contracts use posted prices as a basis, the influence of posted prices is magnified. MMS is proposing a different valuation approach because market conditions have changed and because MMS believes the major portion provision of Indian leases needs to be better implemented. Moreover, the widespread use of exchange agreements and reciprocal sales, as well as the difficulties with relying on posted prices, suggests that many of these past pricing mechanisms are no longer accurate indicators of value in the marketplace. Given the mounting evidence that posted prices frequently do not reflect value in today's marketplace, the proposed valuation standards do not rely at all on postings. Furthermore, the prices referred to in exchange agreements and reciprocal sales may not represent market values. If two companies maintain a balance between purchases and sales, it is irrelevant to them whether the referenced price represents market value. So, after consulting various crude oil pricing experts and after considerable deliberation, MMS proposes to revise this section to value production from Indian leases at the highest of three values: NYMEX futures prices, gross proceeds, or a major portion value. These three methods would be outlined in a table for easy access. MMS proposes this multiple comparison largely because of concerns that current oil marketing practices may at least partially mask the actual value accruing to the lessee. Multiple sales and purchases between the same participants, while apparently at arm's length, may be suspect concerning the contractual price terms. A producer may have less incentive to capture full market value in its sales contracts if it knows it will have reciprocal dealings with the same participant where it, in turn, may be able to buy oil at less than market value. Several MMS consultants reinforced the notion that as long as the two parties maintain *relative* parity in value of oil production traded, the *absolute* contract price in any particular transaction has little meaning. This is particularly obvious in the case of exchange agreements.

Based on the information available to the lessee at the time it needs to value and pay royalties on production, the lessee would first determine whether its gross proceeds or a NYMEX-based index price would yield the higher value. As explained below, MMS would later determine and publish a major portion value. The lessee would then determine if the major portion value was higher than the value it initially reported and paid royalties on. If so, the lessee would owe additional monies. Paragraphs (a), (b), (c), and (d) explain this process. They replace most of existing paragraphs (a), (b), and (c).

Paragraphs (a)(1)–(5). The first of the comparative values would be the average of the five highest daily NYMEX futures settle prices at Cushing, Oklahoma, for the Domestic Sweet crude oil contract for the prompt month. *Settle price* would mean the price established by the New York Mercantile Exchange (NYMEX) Settlement Committee at the close of each trading session as the official price to be used in determining net gains or losses, margin requirements, and the next day's price limits. The prompt month would be the earliest month for which futures are traded on the first day of the month of production. For example, if the production month is April 1997, the prompt month would be May 1997, since that is the earliest, or nearest, month for which futures are traded on April 1.

Paragraphs (a)(2) and (3) would explain that the NYMEX price would have to be adjusted for applicable location and quality differentials, and could be adjusted for transportation costs as discussed below.

Paragraph (a)(4) would maintain that where the lessee disposes of production under an exchange agreement and the lessee refines rather than sells the oil received in return, the lessee would apply this paragraph (unless paragraph (c) results in a higher value). An *Exchange agreement* would be defined as an agreement by one person to deliver oil to another person at a specified location in exchange for reciprocal oil deliveries at another location. Such agreements may be made because each party has crude oil production closer to the other's refinery or transportation facilities than to its own, so each may gain locational advantages. Exchange agreements may or may not specify prices for the oil involved and frequently specify dollar amounts reflecting location, quality, or other differentials. Buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement, are considered exchange agreements. Transportation agreements are purely to accomplish transportation. They specify a location differential for moving oil from one point to the other, with redelivery to the first party at the second exchange point. They are not considered exchange agreements.

Paragraph (a)(5) would provide that MMS would monitor the NYMEX prices. If MMS determines that NYMEX prices are unavailable or no longer represent reasonable royalty value, MMS would, by rule, amend this paragraph to establish a substitute valuation method.

Attached Appendix B is an example of the NYMEX-based index pricing method. Assume that the production month is January 1997. The prompt month would then be February 1997, the prompt month in effect on January 1. In this instance, February 1997 oil futures are traded on the NYMEX from December 20, 1996, through January 21, 1997. The average of the five highest

daily NYMEX futures settle prices for the February 1997 prompt month is $26.25 per bbl. This price would be adjusted for location/quality differentials and transportation (discussed later) to determine the proper oil value for January production.

MMS searched for indicators to best reflect current market prices and settled on NYMEX for several reasons. It represents the price for a widely-traded domestic crude oil (West Texas Intermediate at Cushing, Oklahoma), and there is little likelihood that any particular participant in NYMEX trading could impact the price. Also, NYMEX prices were regarded by many of the experts MMS consulted to be the best available measure of oil market value. As will be discussed in more detail below, the most difficult problem would be to make appropriate location and quality adjustments when comparing the NYMEX crude with the crude produced. Other indicators MMS considered included spot prices as tabulated by various publications and the *P-plus* market. The P-plus indicator shows premiums over posted prices to reflect oil market value on any given day. Spot prices offer the advantage that they are published for several different locations and might involve somewhat less difficult location and quality adjustments. MMS is proposing NYMEX prices primarily because they are perceived to best reflect current domestic crude oil market value on any given day and the minimal likelihood that any one party could influence them. Selection of the average of the five highest daily NYMEX settle prices for a given month is in keeping with a 75th percentile major portion calculation as discussed below for paragraph (c). MMS's proposal to use the five highest prices rather than a strict 75th percentile cutoff is purely for administrative simplicity. Because the number of business days in any given month may vary from 19 to 23, a strict application of the 75th percentile cutoff would lead to questions about whether four, five, or six daily prices should be included. Since 75 percent of the range from 19 to 23 is between 4.75 and 5.75, MMS suggests simply using the average of the five highest daily prices in the month.

MMS also considered timing of NYMEX application. Since the prompt month changes around the 21st of any given production month, two different prompt months exist during the production month. MMS decided to use the prompt month in effect on the first day of the production month. This would result in valuing the current month's production at the nearest month's futures price, but would reflect the market's assessment of value during the production month. The daily closing NYMEX prices are widely available in most major newspapers and various other publications.

MMS received comments on its proposed Federal oil rule (62 FR 3742, January 24, 1996) that we should use a one-month-earlier futures price, where the price would apply to deliveries in the production month but would be determined in an earlier time period. MMS specifically requests comments on the timing of the NYMEX application. MMS also requests comments on each of the following, and any other related issues you may want to address:

- Use of NYMEX as a market value indicator (index),
- Possible alternative market value indicators, and
- Use of the average of the five highest daily NYMEX settle prices as one of the comparison values.

MMS also received comments on its proposed rule for Federal oil valuation suggesting that the NYMEX may not be reflective value for the Rocky Mountain Region due to the isolated nature of that market. MMS requests comments on whether we should use a different valuation method for the Rocky Mountain Region.

Paragraphs (b)(1)–(4). The second of the comparative values would be the lessee's gross proceeds from the sale of its oil under an arm's-length contract. This value could be adjusted for appropriate transportation costs as discussed below. If the lessee disposes of production under an exchange agreement and the lessee then sells the oil received in return at arm's length, the value would be the lessee's resale price adjusted for appropriate quality differentials and transportation costs.

Paragraph (b)(3) would state that the lessee's reported royalty value is subject to monitoring, review, and audit by MMS. MMS may examine whether the lessee's oil sales contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the lessee. If it does not, then MMS may require the lessee to value the oil sold under that contract at the total consideration it received. MMS may require the lessee to certify that its arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

Paragraph (b)(4) would embody the provisions of current paragraph (j) and would require that value be based on the highest price the lessee can receive through legally enforceable claims under its contract. If the lessee fails to take proper or timely action to receive prices or benefits it is entitled to, the lessee must base value on that obtainable price or benefit. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable documented measures to force purchaser compliance, it would owe no additional royalties unless or until it receives monies or consideration resulting from the price increase or additional benefits. This paragraph would not permit the lessee to avoid its royalty payment obligation where a purchaser fails to pay, pays only in part, or pays late. Any contract revisions or amendments that reduce prices or benefits to which the lessee is entitled must be in writing and signed by all parties to the arm's-length contract.

Paragraph (c)(1)–(5). The third comparative value would be a major portion value MMS would calculate within 120 days of the end of each production month based on data reported by lessees and purchasers in the designated area for the production month. *Designated area* would mean an area specified by MMS for valuation and transportation cost/differential purposes, usually corresponding to an Indian reservation.

Paragraph (c)(2) would explain that each designated area would apply to all Indian leases in that area. MMS would publish in the **Federal Register** a list of the leases associated with each designated area. This paragraph would list the fifteen initial designated areas based generally on Indian reservations boundaries, plus any other areas MMS designates. This paragraph would also provide that MMS would publish any new area designations in the **Federal Register**. MMS also would publish in the **Federal Register** a list of all Indian leases that are in a designated area for purposes of these regulations.

Paragraph (c)(3) would describe how MMS would calculate the major portion value. MMS would use price and volume information submitted by lessees on Form MMS–2014, Report of Sales and Royalty Remittance. As explained previously, each price reported by lessees on Form MMS–2014 would be the highest of the gross proceeds on a NYMEX-based index price. MMS also would use information provided by buyers and sellers of production from the designated area on new Form MMS–4416, Indian Crude Oil Valuation Report, to verify values reported on Form MMS–2014. Form MMS–4416 reporting is discussed in more detail below. For each designated area, MMS would first adjust individual

values for quality differences and appropriate transportation costs. Then MMS would array the reported values from highest to lowest. The major portion value would be that value at which 75 percent of the oil (by volume, starting from the lowest value) is bought or sold. Sales volumes would include those volumes taken in kind and resold by the Indian lessor.

The proposed major portion calculation would be a departure from the current regulation, where the major portion value is the value at which 50 percent plus 1 barrel of oil is sold, starting from the lowest price. MMS and Indian representatives had considerable deliberation on this issue. Indian lessors have criticized MMS since the publication of the definition of the major portion value in 1988. They have argued that the definition of the major portion in the 1988 regulation does not adequately represent the lease terms concerning the highest price paid or offered for a major portion of production. They argue that *median* is not synonymous with *major*. Thus, MMS is proposing to use the value at which 75 percent or more of the oil is sold, starting with the lowest value, as the definition of the term *major*.

Paragraph (d). This paragraph would explain how the lessee would report and pay royalties on the values determined under paragraphs (a), (b), and (c) above. It would explain that by the date the royalty payments are due, the lessee would be required to report, on Form MMS–2014, and pay the value of production at the higher of the values determined under paragraph (a) or (b). Once MMS completes its major portion calculations, MMS would inform the lessee of the major portion value for its applicable designated area. If this value exceeds the value the lessee initially reported for the production month, it would have to adjust the value to the higher major portion value by submitting an amended Form MMS–2014 within 30 days after it receives notice from MMS of the major portion value. MMS intends to monitor compliance with this requirement. MMS would specify, in the *MMS Oil and Gas Payor Handbook*, additional reporting requirements related to paragraphs (a), (b), and (c). This paragraph would also provide that the lessee would not accrue late-payment interest under 30 CFR 218.54 on any underpayment associated with a higher major portion value until the due date of its amended Form MMS–2014. MMS did not consider it equitable to assess interest for periods before MMS notifies the lessee of the major portion value.

MMS believes the major portion value at the 75th percentile from the bottom is a reasonable safeguard to assure that major portion provisions of Indian leases are satisfied. Thus, to build certainty into the lessee's royalty valuation, MMS also proposes in paragraph (d) that it could not change its major portion value once it issues notice of the value to lessees, except as may be required by an administrative or judicial decision. Such a decision may include an Interior Board of Land Appeals, District Court, or Circuit Court decision overturning MMS's calculation of the major portion price. A lessee or an Indian lessor could appeal the major portion value if it could demonstrate that MMS had not performed the calculation correctly.

MMS requests comments on the comparison of NYMEX prices, gross proceeds, and a major portion value as the proper method of valuing Indian crude oil for royalty purposes. Please also incorporate specific comments on the proposed major portion calculation procedure, particularly whether there is a more efficient and contemporaneous process for calculating and publishing the major portion price.

In addition to comments on the comparison between the three different price bases discussed above, MMS requests specific comments on alternative valuation techniques based on local market indicators. MMS believes that today's oil marketing is driven largely by the NYMEX market. But the location/quality adjustments needed to derive lease value using NYMEX would involve considerable administrative effort for all involved. MMS requests suggestions on ways to value Indian oil production based on market indicators in the vicinity of the lease, with the following in mind:

(1) The methods should not rely on posted prices unless they account for the difference between postings and market value.

(2) The methods must account for value differences related to quality and location.

(3) The methods must be widely applicable and flexible enough to apply to all Indian crude oil production.

(4) Most importantly, the methods must address the major portion provisions of Indian leases—the method must reflect ''the highest price paid or offered at the time of production for the major portion of oil production from the same field.''

MMS has considered that maximizing royalty revenues from Indian leases might affect the economics of mineral resource development. But MMS believes that specific royalty values should be independent of this concept and not effectively lowered as a result. Rather, this issue should be examined in the context of lease term adjustments by the Bureau of Indian Affairs and the Indian lessor. MMS requests specific comments on whether these proposed regulations would decrease leasing on Indian lands or otherwise affect the competitiveness of Indian leases.

Section 206.53 What Other General Responsibilities Do I have to Value the Oil?

This newly designated section would include several of the provisions of the existing rules, but rewritten and reordered for clarity. These provisions would replace part or all of current paragraphs (d), (e), (f), and (i), under existing § 206.52 and would state that:

(a) The lessee must make its oil sales and volume data available to authorized MMS, Indian, and other representatives on request. This would include any relevant data it has from fee and State leases. When the lessee entered into the lease, it expressly agreed that the Secretary will determine royalty value and that value may be calculated based on the price paid for the major portion of oil sold from the field where the leased lands are located. The lessee also agreed to provide all records necessary to determine royalty value. Finally, the lessee agreed to abide by and conform to the Secretary's regulations. The Secretary needs the lessee's records concerning its production from State and fee lands to determine value under the lease terms and regulations. Thus, MMS may require the lessee to submit records concerning the volume and value of non-Federal and non-Indian oil production;

(b) The lessee must retain all data relevant to royalty value determination according to recordkeeping requirements at 30 CFR 207.5. MMS or the lessor may review and audit the lessee's data, and may direct the lessee to use a different value if MMS determines the lessee's reported value is inconsistent with the requirements of this section;

(c) If MMS determines that the lessee has undervalued its production, the lessee must pay the difference plus interest under 30 CFR 218.54. If the lessee has a credit due, MMS will provide instructions for taking it; and

(d) The lessee must place the oil in marketable condition and market the oil for the mutual benefit of the lessee and lessor at no cost to the Indian lessor unless the lease agreement or this section provide otherwise. We would modify this paragraph to clarify that it includes a duty to market the oil. This

is consistent with several Interior Board of Land Appeals decisions construing this duty. *See Walter Oil and Gas Corporation*, 111 IBLA 260 (1989).

Section 206.54 May I ask MMS for Valuation Guidance?

This new section would replace existing § 206.52(g) to explain that MMS will provide guidance to lessees in determining value. MMS points out that all value determinations are subject to later review and audit, and the lessee later could be required to pay based on a different value. If so, the lessee also could be liable for additional royalties and late payment interest for the period it used an improper value for the production.

Section 206.55 Does MMS Protect Information I Provide?

Newly designated § 206.55 would include the content of existing § 206.52(l), but would be rewritten for clarity. It would also state that MMS would protect information from disclosure to the extent allowed under applicable laws and regulations.

Deletion of existing § 206.52(e)(2) and (h)

MMS proposes to delete existing § 206.52(e)(2), which requires lessees to notify MMS if they determine value under existing § 206.52(c)(4) or (c)(5). Since MMS proposes to delete those paragraphs, paragraph (e)(2) no longer would apply.

MMS also proposes to delete § 206.52(h), which says royalty value will not be less than the lessee's gross proceeds, less applicable allowances. This clause would be redundant given that the lessee's gross proceeds already form one of the value bases proposed for comparison in § 206.52.

Section 206.57 Point of Royalty Settlement

This section would not be changed from existing § 206.53, but would be redesignated as § 206.57.

Section 206.60 What Transportation Allowances and Other Adjustments Apply to the Value of Oil?

Paragraph (a) Transportation Allowances

This paragraph would be similar in scope to § 206.54(a) of the present rule, but would apply only when the lessee values production based on gross proceeds (Section 206.52(b)) and under limited conditions when the lessee values production using NYMEX (Section 206.52(a)) as discussed below. Paragraph (a)(1) would use a table to outline when a lessee may claim a transportation allowance.

Transportation allowance would mean a deduction in determining royalty value for the reasonable, actual costs of moving oil from the designated area boundary to a point of sale or delivery off the designated area. The transportation allowance would not include gathering costs or costs of moving production from the lease to the designated area boundary. MMS's proposal not to allow transportation costs within Indian reservations would be based on consistent feedback from Indian lessors that such costs should not be permitted. They say that since their leases typically are silent on transportation costs, there is no specific provision permitting such deductions. But they acknowledge that costs to move production away from the reservation/designated area may be legitimate deductions.

Paragraph (a)(2) would explain that transportation allowances would not be permitted:

(i) if the oil is taken in kind and delivered in the designated area;

(ii) when the sale or title transfer point is within the designated area; or

(iii) when the lessee values production under the major portion provision at Section 206.52(c)—permissible transportation costs already would have been deducted before MMS performs this calculation.

MMS requests specific comments on permitting transportation allowances from the designated area rather than the lease.

Paragraph (b) Are There Limits on My Transportation Allowance?

Proposed paragraphs (b)(1) and (b)(2) would include the substance of existing § 206.54(b)(1) and (b)(2) respectively, but would be rewritten for clarity and to reflect plain English. Paragraph (b)(1) would also contain a table outlining the allowance limits. Paragraph (b)(1) would clarify that except as provided in paragraph (b)(2), the allowance deduction cannot be more than 50 percent of the oil value at the point of sale when valuing oil under gross proceeds. Under NYMEX valuation, the allowance would not be permitted to exceed 50 percent of the average of the five highest daily NYMEX futures settle prices (Cushing, Oklahoma) for the domestic Sweet crude oil contract for the prompt month.

Paragraph (c) Must I Allocate Transportation Costs?

Proposed paragraph (c) would be essentially the same as existing § 206.54(c). However, it would also point out that the lessee may not allocate costs to production for which those costs were not incurred.

Paragraph (d) What Other Adjustments Apply When I Value Production Based on Index Pricing?

Proposed new paragraph (d) would state that if the lessee values oil based on index pricing (NYMEX) under § 206.52(a), MMS would require certain location differentials associated with oil value differences between the designated area and the index pricing point outside the designated area. We discuss those differentials below under § 206.61(c). If the lessee produces oil in the designated area that includes Cushing, Oklahoma, it would only be entitled to a quality adjustment.

Paragraph (e) What Additional Payments May I Be Liable For?

Proposed paragraph (e) would contain similar requirements as existing § 206.54(d), but would be rewritten for clarity. Further, because adjustments would be made for location and quality differences, this paragraph would provide that the lessee would be liable for additional payments if those adjustments were incorrect.

Section 206.61 How do lessees determine transportation allowances and other adjustments?

Paragraph (a), dealing with arm's-length transportation contracts, would not be changed. However, MMS notes that lessees no longer are required to file Form MMS–4110, Oil Transportation Allowance Report, before claiming an arm's-length allowance on Federal leases. MMS requests specific comments on the benefits and drawbacks of continuing to require submission of Form MMS–4110 before lessees may claim an arm's-length transportation allowance on Indian leases.

Paragraph (b), dealing with non-arm's-length and no contract situations, would be changed by deleting paragraph (b)(5). The existing paragraph (b)(5) allows a lessee to apply for an exception from the requirement that it compute actual costs of transportation; a Federal Energy Regulatory Commission (FERC) approved tariff could be used instead.

MMS believes that the use of actual costs is fair to lessees and that use of a FERC-approved tariff overstates allowable costs in non-arm's-length situations. Also, just as for arm's-length contracts, MMS notes that lessees of Federal lands no longer are required to file Form MMS–4110 before claiming a non-arm's-length transportation allowance. MMS requests specific comments on whether lessees should

still be required to submit Form MMS–4110 before claiming a non-arm's-length transportation allowance on Indian leases.

Paragraph (c) What adjustments apply when using index pricing? Proposed paragraph (c)(1) would describe adjustments the lessee must make to index prices where it values its oil based on index pricing under § 206.52(a). These adjustments and deductions would reflect the location/quality differentials and transportation costs associated with value differences between oil at the designated area boundary and the index pricing point outside the designated area. *Index pricing point* would be the physical location where a given price index—in this case NYMEX—is established. For NYMEX, that location is Cushing, Oklahoma. Although location differentials would reflect differences in value of oil at different locations, they are not transportation cost allowances. In fact, location differentials may increase a value rather than decrease it. Quality differentials would reflect differences in the value of oil due to different API gravities, sulfur content, etc. Location differentials generally also encompass quality differentials. Proposed paragraph (c)(1) would identify the specific adjustments and allowances that may apply to your production. The possible adjustments and allowances would be:

(i) A location differential to reflect the difference in value between crude oils at the index pricing point (West Texas Intermediate at Cushing, Oklahoma) and the appropriate market center (for example, West Texas Intermediate at Midland, Texas). *Market center* would be defined as a major destination point for crude oil sales, refining, or transshipment. As used here, market centers would be locations where trade publications provide crude oil spot price estimates. The market center that the lessee would use is the point where oil produced from its lease or unit ordinarily would flow towards if not disposed of at an earlier point.

For any given production month, the market center-index pricing point location/quality differential would be the difference between the average spot prices for the respective locations as published in an MMS-approved publication. *MMS-approved publication* would mean a publication MMS approves for determining NYMEX prices or location differentials (MMS-approved publications are discussed further below.) The purpose of this differential is to derive a NYMEX price at the market center by adjusting the NYMEX price at the index pricing point to the general quality of crude typically traded at the market center, and otherwise to reflect location/quality value differences at the appropriate market center.

Attached as Appendices C and D are examples of how the averages of the daily spot prices would be calculated for the index pricing point (Cushing, OK) and a selected market center (Midland, TX), respectively. The value difference between the two spot price averages would be the location differential between the index pricing point and the market center.

As an example, assume that *Platt's Oilgram* is an MMS-approved publication. For the February 1997 delivery month, spot sales prices are assessed from December 26, 1996, through January 24, 1997. The average of the daily (mean) spot price assessments for the month is utilized to calculate the location differential. In this instance, the average spot price for Cushing is $25.38 per bbl. and the average spot price for Midland is $25.20 per bbl. Since the Midland price is $.18 per bbl. lower than the Cushing price, the $.18 per bbl. would be deducted from the NYMEX-based price (or an addition would be made if the Midland price were higher than the Cushing price).

(ii) An express location/quality differential under the lessee's arm's-length exchange agreement that would include a clearly identifiable location/quality differential for the crude oil value difference between the market center and the designated area boundary.

In the cases that involve such agreements, the differential stated in the agreement should reflect actual value differences resulting from differences in location and quality between crude oils at the designated area boundary and the associated market center.

(iii) A location/quality differential that MMS would publish in the **Federal Register** annually that the lessee would use if it did not dispose of production under an arm's-length exchange agreement that contains an express differential as described above. MMS would stratify its calculated differentials so that specific quality differentials attributable to different grades of crude oil would be identified separately from location differentials. MMS would publish differentials for each designated area and an associated market center outside of the designated area. A designated area may be associated with more than one market center. As discussed in more detail below, MMS would periodically publish in the **Federal Register** a list of market centers associated with designated areas. The differential would represent crude oil value differences due to location and quality factors. MMS would acquire the information needed to calculate these specific differentials from exchange agreement data provided by lessees on a new reporting form (Form MMS–4416) discussed below. MMS would calculate the differentials using a volume-weighted average of the differentials derived from data reported on Form MMS–4416 for the previous reporting year. The differentials may reflect both a location differential based on the market center/designated area pairs and a quality differential based on the different types of crude oil exchanged. The lessee would apply the differential on a calendar production year basis. This means the lessee would apply it for the *reporting* months of February through the following January.

(iv) The lessee's actual transportation costs from the designated area boundary to the market center outside of the designated area as determined under § 206.61. MMS is not proposing to change the existing methods to calculate transportation allowances. The allowance would terminate at the market center as part of the total adjustment to derive an index-price-based value at the lease.

The purpose of these adjustments and allowances would be to reflect value differences for crude oil production of different qualities and at different locations to derive value at the designated area. The location differentials between the index pricing point and the market center, and between the market center and the designated area, would not necessarily reflect transportation alone. They would represent the overall market assessment of the different relative values of similar crude oil delivered at different locations. Only the actual transportation costs from the designated area to the market center would represent pure transportation costs.

MMS considered alternative index price adjustment methods ranging from using index values with no location adjustments to picking a specific percentage deduction from the index value to generically reflect location differentials. A variation of the latter would be to develop percentage or absolute dollar deductions for different geographical zones. In addition to specific comments on the proposed method of adjusting index values, MMS requests suggestions on alternative methods.

Proposed paragraph (c)(2) would specify which of the adjustments and allowances described above would

apply to the lessee in various situations. This paragraph would include a table that would outline which adjustments under paragraph (c)(1) would apply. If the lessee disposed of its production under an arm's-length exchange agreement and the agreement had an express location/quality differential to reflect the difference in value between the designated area boundary for its lease and an associated market center outside of the designated area, then it would use two of the four possible adjustments and allowances. Specifically, it would use the market center-index pricing point location/quality differential under paragraph (c)(1)(i) and the designated area-market center differential specified in its exchange agreement under paragraph (c)(1)(ii).

Attached as Appendix E is an example of a NYMEX-based royalty computation for production from the Navajo reservation. The publications for calculating the NYMEX price and index pricing point-market center location differential have been discussed above and are illustrated at Appendices B, C, and D.

The deduction from the NYMEX-based price for the location/quality differential between the market center and designated area would be the actual exchange agreement differential or an MMS-published differential. (For purposes of this example, we used $.25 per bbl.)

If the lessee moved lease production directly to an MMS-identified market center outside of a designated area that is also the index pricing point (Cushing, Oklahoma), then it would use only two of the adjustments and allowances. The lessee would use the designated area-market center (index pricing point) quality differential under paragraph (c)(1)(iii) to determine the difference in value attributable to quality differences, and the actual transportation costs from the designated area boundary to the market center under paragraph (c)(1)(iv). For applying paragraph (c)(1)(iii), the lessee would use the quality differential published by MMS corresponding to oil similar to its production as compared to the quality of oil used for index pricing.

If the lessee did not move lease production from a designated area to an MMS-identified market center, but instead moved it directly to an alternate disposal point (for example, its own refinery), then it would use only two of the adjustments and allowances. The lessee would use the market center-index pricing point location/quality differential under paragraph (c)(1)(i) and the actual transportation costs from the designated area boundary to the alternate disposal point outside of the designated area under paragraph (c)(1)(iv). The market center for purposes of paragraph (c)(1)(i) is the MMS-identified market center nearest the lease where there is a published spot price for crude oil of like quality to the lessee's. *Like-quality oil* would mean oil with similar chemical, physical, and legal characteristics. For example, West Texas Sour and Wyoming Sour would be like-quality, as would West Texas Intermediate and Light Louisiana Sweet. The market center for purposes of paragraph (c)(1)(iv) would be the alternate disposal point.

For example, a lessee producing sour crude from Indian leases in Wyoming might transport its oil directly to a refinery in Salt Lake City, Utah, without accessing any defined market center. In this case West Texas Sour crude at Midland, Texas, might represent the crude oil/market center combination most like and nearest to the oil produced. The market center-index pricing point location/quality differential under paragraph (c)(1)(i) would then be the difference in the spot price between West Texas Intermediate at Cushing, Oklahoma, and West Texas Sour at Midland, Texas as published in an MMS-approved publication. In addition to that adjustment, the lessee would be entitled to an allowance for the actual transportation costs from the designated area boundary in Wyoming to Salt Lake City (paragraph (c)(1)(iv), with Salt Lake City considered the market center for applying this deduction). MMS is proposing that this method is the best way to calculate the differences in value between the designated area and the index pricing point due to location, quality, and transportation when the production is not actually moved to a market center.

In all other situations, the lessee would use the market center-index pricing point location/quality differential (paragraph (c)(1)(i)) and the MMS-published designated area-market center location/quality differential under paragraph (c)(1)(iii). These adjustments would cover all location, quality, and transportation differences in value between the designated area and the index pricing point.

Proposed paragraph (c)(3) would state that if an MMS-calculated differential does not apply to a lessee's oil, due to either location or quality differences, the lessee must request in writing that MMS calculate a location/quality differential that would apply to its oil. Conditions for an exception would include:

(1) After MMS publishes its annual listing of location/quality differentials, the lessee must deliver to MMS its written request for an MMS-calculated differential;

(2) The lessee must provide evidence demonstrating why the published differential(s) does not adequately reflect its circumstances; and

(3) MMS will calculate a revised differential for the lessee when it receives the lessee's request or when it determines that the published differential does not apply to the lessee's oil. If additional royalties and interest are due, MMS then would bill for them. If the lessee filed a request for exception within 30 days after MMS publishes its annual listing of location/quality differentials, the MMS-calculated differential would apply as of the effective date of the published differentials. But if the request was received more than 30 days after MMS publishes its differential listing, the MMS-calculated differential would apply beginning the first day of the month following the date of the lessee's application for exception. In this case the published differentials would apply in the interim and MMS would not refund any overpayments made due to failure to timely request MMS to calculate a differential.

MMS would insert paragraph (c)(4) to note that it would periodically publish a list of MMS-approved publications in the **Federal Register**. This paragraph would also specify the criteria for acceptability. It would specify that the publications must:

(i) Be frequently used by buyers and sellers;

(ii) Be frequently mentioned in purchase or sales contracts;

(iii) Use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of crude oil; and

(iv) Be independent from MMS, other lessors, and lessees.

Proposed paragraph (c)(5) would allow any publication to petition MMS to add them to the list of acceptable publications.

Proposed paragraph (c)(6) would state that MMS would reference the specific tables in individual publications that lessees must use to determine location differentials.

Proposed paragraph (c)(7) would explain that MMS would periodically publish in the **Federal Register** a list of market centers. MMS would monitor market activity and, if necessary, add or modify market centers. MMS would consider the following factors and conditions in specifying market centers:

(i) Points where MMS-approved publications publish prices useful for index purposes;

(ii) Markets served;

(iii) Pipeline and other transportation linkage;

(iv) Input from industry and others knowledgeable in crude oil marketing and transportation;

(v) Simplification; and

(vi) Other relevant matters.

MMS would initially consider the following as Market Centers:

Cushing, OK;
Empire, LA;
Guernsey, WY;
Midland, TX; and
St. James, LA.

Where Cushing, Oklahoma, is used as a market center, the index pricing point and market center would coincide. MMS requests specific comments on the initial list of market centers, including suggested additions, deletions and other modifications.

(d) Reporting requirements. MMS would redesignate existing paragraph (c) as (d) and revise redesignated paragraphs (d)(1)(i) and (d)(2)(i). Paragraph (d)(3) would otherwise remain the same, except that MMS would delete existing paragraph (c)(2)(viii) consistent with the previous change to delete the use of FERC- or State-approved tariffs. Redesignated paragraph (d)(4) would be modified to say that not only transportation allowances, but also location and quality differentials, must be reported as separate lines on Form MMS–2014 unless MMS approves a different procedure. MMS would provide additional royalty reporting details and requirements in the *MMS Oil and Gas Payor Handbook*.

(5) What Information Must a Lessee Provide To Support Index Pricing Deductions, and How Is It Used?

Proposed paragraph (d)(5) would be added to require lessees and all other purchasers of crude oil from Indian leases to submit a new form to MMS. We realize this may result in some duplicate information being filed by buyers and sellers, but MMS believes the buyer information will be very useful in confirming reported royalty values. Proposed Form MMS–4416, Indian Crude Oil Valuation Report, would capture value and location differential information from all exchange agreements or other contracts for disposal of oil from Indian lands. MMS would use these data to calculate location differentials between market centers and designated areas and to verify values reported on Form MMS–2014. MMS would publish annually in the **Federal Register** the location differentials for lessees to use in royalty reporting. MMS has included a copy of proposed Form MMS–4416 as Appendix A to these proposed regulations.

Information submitted on the new form would cover all of the lessee's crude oil production from Indian leases. All Indian lessees and all purchasers of oil from Indian lands would initially submit Form MMS–4416 no later than 2 months after the effective date of this reporting requirement, and then by October 31 of the year this regulation takes effect and by October 31 of each succeeding year. However, if October 31 of the year this regulation takes effect is less than 6 months after the effective date of this reporting requirement, the second submission of the Form MMS–4416 would not be required until October 31 of the succeeding year. In addition to the annual requirement to file this form, a new form would be required to be filed each time a new exchange or sales contract involving the production of oil from an Indian lease is executed. However, if the contract merely extends the time period a contract is in effect without changing any other terms of the contract, this requirement would not apply.

The reporting requirement would take effect before the effective date of the remainder of the rule. Early submittal of this information would allow MMS to publish the representative market center-designated area location differentials in the **Federal Register** by the effective date of the final regulation. Then MMS would publish location differentials by January 31 of all subsequent years. MMS would publish differentials for different qualities/grades of crude oil if the data are sufficient and if multiple differentials are appropriate for the area. Each year following the year this regulation became effective, lessees would use the new published differentials beginning with January production royalties reported in February.

MMS received many comments under its proposed Federal oil valuation rule on the administrative burden created by proposed Form MMS–4415. Therefore, MMS requests comments on how proposed Form MMS–4416 for Indian oil could be simplified, yet remain useful, in determining adjustments to the NYMEX-based price. Specifically, MMS requests comments on Form MMS–4416 (See Appendix A), including:

- Its layout and information requested;
- Frequency and timing of submittal;
- Frequency and timing of MMS's calculations and publication of differentials; and
- All other relevant comments.

Remainder of Section 206.55

MMS proposes no changes to existing paragraphs (d) and (e) except to redesignate them as paragraphs (e) and (f).

In addition to redesignating paragraph (f) as (g), MMS proposes to remove the reference to FERC- or State-approved tariffs to be consistent with the proposed deletion of paragraph 206.55(b)(5). MMS proposes no change to existing paragraph (g) except to redesignate it as paragraph (h).

IV. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule 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.*). This proposed rule would amend regulations governing the valuation for royalty purposes of crude oil produced from Indian lands. These changes would modify the valuation methods in the existing regulations. Small entities are encouraged to comment on this proposed rule.

Approximately 125 payors pay royalties to MMS on oil production from Indian lands. The majority of these payors are considered small businesses under the criteria of the Small Business Administration (500 employees or less). MMS estimates this proposal will have an annual dollar impact of $368 per payor (Total Dollar Impact of $45,955÷125 Indian Royalty Payors). The estimated yearly industry compliance cost under this rule is $45,955. This amount is based on an annual burden of 1,313 hours for 125 payors X $35 (industry cost per hour).

Further, based on data obtained from the Small Business Administration (SBA), a small business on average has estimated receipts of $2,000,000. An annual cost impact of $368 for a small business to comply with this rule is not considered significant.

Approximately 125 payors report and pay royalties on oil production from Indian mineral leases. Of these 125 companies, most would be considered small entities under the SBA criteria. Since there are 15,838 small firms in the oil and gas industry in the United States, only about 1 percent (125÷15,838) are involved with MMS's business of reporting and paying royalty on oil produced from Indian lands. Accordingly, this rule will not affect a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2

U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, or State governments, or the private sector.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable civil justice reform standards provided in Sections 3(a) and 3(b)(2) of this Executive Order.

Executive Order 12866

The Office of Management and Budget has determined this rule is a significant rule under Executive Order 12866 Section 3(f)(4)c, which states: ''Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.'' The Office of Management and Budget has reviewed this rule under Executive Order 12866.

The Department's analysis of these proposed revisions to the oil valuation regulations indicates these changes will not have a significant economic effect as defined by Section 3(f)(1) of Executive Order 12866.

This rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The MMS concludes that this proposed rule would result in an annual increase in Indian oil royalties of approximately $3.6 million. MMS and industry will realize administrative savings because of reduced complexity in royalty determination and payments and would introduce certainty into Indian royalty reporting.

Paperwork Reduction Act

This proposed rule contains a collection of information which has been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior, Washington, D.C. 20503. Send copies of your comments to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is: Building 85, Denver Federal Center, Denver, Colorado 80225; e:Mail address is: David__Guzy@mms.gov.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, MMS will consider all comments received during the comment period for this notice of proposed rulemaking.

The information collection is titled Indian Crude Oil Valuation Report. Part of the valuation of oil under this proposed rule relies on price indices that lessees may adjust for location differences between the index pricing point and the designated area. Lessees (and their affiliates as appropriate) on Indian lands, as well as purchasers of oil from these lands, would be required to give MMS information on the prices and location differentials included in their various oil exchange agreements and sales contracts. MMS would use these data to calculate and publish representative location differentials for lessees' use in reporting royalties in different areas. MMS would also use these data to verify royalty values reported on Form MMS–2014. This process would introduce certainty into royalty reporting.

Rules establishing the use of Form MMS–4416 to report oil values and location differentials are at proposed 30 CFR 206.55(d)(5). Information provided on the forms may be used by MMS auditors and the Royalty Valuation Division (RVD).

MMS estimates the annual reporting burden at 1,313 hours. There are approximately 125 oil royalty payors on Indian leases. These payors will have varying business relationships with one or more Indian tribes and/or allottees. MMS estimates that, on average, a payor will have six exchange agreements or sales contracts which enable the Indian oil royalty payor to either sell or refine the oil production from the Indian lease(s) for which they are making royalty payments. We estimate that a payor will fill out Form MMS–4416 in about one-half hour; we estimate the payor would have to submit the form twice a year because of contract changes in addition to the required annual filing discussed below (750 agreements/contracts × ½ hour × 2=750 burden hours).

In addition, MMS estimates that half of the exchange agreements or sales contracts would also be reported by non-payor purchasers of crude oil from Indian leases as required by 30 CFR 206.55(d)(5). Again, we estimate that the filing of Form MMS–4416 could take one-half hour per report to extract the data from individual exchange agreements and sales contracts; we also estimate that a non-payor purchaser would file a report twice a year for each agreement/contract (375 agreements/contracts × ½ hour × 2=375 burden hours).

To assure Indian lessors, tribes and allottees that all payors and non-payor purchasers are complying with these proposed Indian valuation regulations, we will require that Form MMS–4416 be submitted annually for all agreements/contracts to which payors and non-payor purchasers are parties, regardless of whether the agreements/contracts change or not. We estimate that this would require 10 minutes per report to indicate a no-change situation (750+375) agreements/contracts × ⅙ hour = 187.5 burden hours). Only a minimal recordkeeping burden would be imposed by this collection of information. Based on $35 per hour cost estimate, the annual industry cost is estimated to be $45,955 [(750+375+188) total burden hours × $35=$45,955].

In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. For instance your comments may address the following areas. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: November 26, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, MMS proposes to amend 30 CFR part 206 as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 96a *et seq.*; 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 351 et seq;, 1001 et seq;, 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart B—Indian Oil

2. Section 206.53 is redesignated as § 206.57, § 206.54 is redesignated as § 206.60, and § 206.55 is redesignated as § 206.61.

3. Sections 206.50 through 206.52 are revised and new §§ 206.53 through 206.56 are added to read as follows:

§ 206.50 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Indian (tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). It explains how lessees (a defined term) must calculate the value of production for royalty purposes consistent with applicable laws and lease terms.

(b) A provision in this subpart does not apply if it is inconsistent with:

(1) A Federal statute;

(2) A treaty;

(3) A settlement agreement resulting from administrative or judicial litigation; or

(4) An express provision of an oil and gas lease subject to this subpart.

(c) MMS or Indian tribes may audit and adjust all royalty payments.

(d) This subpart is intended to ensure that the United States discharges its trust responsibilities for administering Indian oil and gas leases under the governing mineral leasing laws, treaties, and lease terms.

§ 206.51 Definitions.

The following definitions apply to this subpart:

Area means a geographic region at least as large as the limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement between independent, nonaffiliated persons with opposing economic interests regarding that contract. Two persons are affiliated if one person controls, is controlled by, or is under common control with another person. Based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership: ownership over 50 percent constitutes control; ownership of 10 through 50 percent creates a presumption of control; and ownership of less than 10 percent creates a presumption of noncontrol. MMS may rebut this presumption if it demonstrates actual or legal control, as through interlocking directorates. MMS may require the lessee to certify the percentage of ownership or control. Aside from the percentage ownership criteria, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. To be considered arm's-length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees who pay royalties, rents, or bonuses on Indian leases.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BLM means the Bureau of Land Management of the Department of the Interior.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that with due consideration creates an obligation.

Designated area means an area specified by MMS for valuation and transportation allowance/differential purposes, usually corresponding to an Indian reservation.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include ''buy/sell'' agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement. Exchange agreements do not include ''transportation'' agreements, whose principal purpose is transportation.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area that BLM approves for onshore leases.

Gross proceeds means the total monies and other consideration accruing to the lessee for the disposition of oil produced. Gross proceeds includes, but is not limited to, the examples discussed in this definition. Gross proceeds includes payments for services such as dehydration, measurement, and/or gathering which the lessee must perform at no cost to the Indian lessor. It also includes the value of services, such as salt water disposal, that the lessee normally performs but that the buyer performs on the lessee's behalf. Gross proceeds also includes reimbursements for terminaling fees. Tax reimbursements are part of the gross proceeds even though the Indian royalty interest may be exempt from taxation. Monies and all other consideration a seller is contractually or legally entitled to, but does not seek to collect through reasonable efforts, are also part of gross proceeds.

Indian allottee means any Indian for whom the United States holds land or a land interest in trust or who holds title subject to Federal restriction against alienation.

Indian tribe means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other Indian group for which the United States holds any land or land interest in trust or which is subject to Federal restriction against alienation.

Index pricing means using NYMEX futures prices for royalty valuation.

Index pricing point means the physical location where an index price is established in an MMS-approved publication.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law applicable to Indian lands that authorizes exploration for, development or extraction of, or removal of oil or gas products—or the land area covered by that authorization, whichever the context requires.

Lessee means any person to whom an Indian Tribe or allottee issues a lease, and any person assigned an obligation to make royalty or other payments required by the lease. This includes any person holding a lease interest (including operating rights owners) as well as an operator, purchaser, or other person with no lease interest but who makes royalty payments to MMS or the lessor on the lessee's behalf. Lessee includes all affiliates, including but not limited to a company's production, marketing, and refining arms.

Like-quality oil means oil with similar chemical, physical, and legal characteristics.

Load oil means any oil used in the operation of oil or gas wells for wellbore stimulation, workover, chemical treatment, or production purposes. It does not include oil used at the surface to place lease production in marketable condition.

Location differential means the value difference for oil at two different points.

Major portion means the highest price paid or offered at the time of production for the major portion of oil production from the same designated area. It is calculated monthly using like-quality oil from the same designated area (or, if the corresponding field or area is larger than the designated area and if necessary to obtain a reasonable sample, from the same field or area).

Market center means a location MMS recognizes for oil sales, refining, or transshipment. Market centers generally are locations where MMS-approved publications publish oil spot prices.

Marketable condition means oil sufficiently free from impurities and otherwise in a condition a purchaser will accept under a sales contract typical for the field or area.

MMS means the Minerals Management Service of the Department of the Interior.

MMS-approved publication means a publication MMS approves for determining NYMEX prices or location differentials.

Net profit share (for applicable Indian leases) means the specified share of the net profit from production of oil and gas as provided in the agreement.

Netting means reducing the reported sales value to account for transportation instead of reporting a transportation allowance as a separate line on Form MMS–2014.

NYMEX means the New York Mercantile Exchange.

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is considered oil.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Quality differential means the value difference between two oils due to differences in their API gravity, sulfur content, viscosity, metals content, and other quality factors.

Sale means a contract where:

(1) The seller unconditionally transfers title to the oil to the buyer. The seller may not retain any related rights such as the right to buy back similar quantities of oil from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil; and

(3) The parties' intent is for a sale of the oil to occur.

Settle price means the price established by NYMEX's Exchange Settlement Committee at the close of each trading session as the official price to be used in determining net gains or losses, margin requirements, and the next day's price limits.

Spot price means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration;

(2) No cancellation notice is required to terminate the sales agreement; and

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs of moving oil from the designated area boundary to a point of sale or delivery off the designated area. The transportation allowance does not include gathering costs or costs of moving production from the lease to the designated area boundary.

§ 206.52 How does a lessee determine the royalty value of the oil?

This section explains how you must determine the value of oil produced from Indian leases. For royalty purposes, the value of oil produced from leases subject to this subpart is the value calculated under this section with applicable adjustments determined under this subpart. The following table lists three oil valuation methods. You must determine the value of oil using the method that yields the highest value. As explained under paragraph (d) of this section, you must select from the first two methods and make an initial value calculation and payment based on the method that yields the highest value. MMS will calculate and publish the value under the third method. If the third method yields a higher value than the first two methods, you must adjust the value from your initial calculation as explained under paragraph (d) of this section.

Valuation method	Subject to
The average of the five highest daily NYMEX futures settle prices (Cushing, Oklahoma) for the Domestic Sweet crude oil contract for the prompt month.	Paragraphs (a) (1)–(5) of this section.
The gross proceeds from the sale of your oil under an arm's-length contract	Paragraphs (b) (1)–(4) of this section.
A major portion value that MMS calculates for each designated area within 120 days of the end of each production month.	Paragraphs (c) (1)–(4) of this section.

(a) You may calculate value using the average of the five highest daily NYMEX futures settle prices (Cushing, Oklahoma) for the Domestic Sweet crude oil contract for the prompt month.

If you use this method, the provisions of this paragraph (a) apply.

(1) The prompt month is the earliest month for which futures are traded on the first day of the month of production. For example, if the production month is April 1997, the prompt month would be May 1997, since that is the earliest month for which futures are traded on April 1.

(2) You must adjust the index price for applicable location and quality differentials under § 206.61(c) of this subpart.

(3) If applicable, you may adjust the index price for transportation costs under § 206.61(c) of this subpart.

(4) If you dispose of oil under an exchange agreement and you refine rather than sell the oil that you receive in return, you must use this paragraph (a) to determine initial value.

(5) MMS will monitor the NYMEX prices. If MMS determines that NYMEX prices are unavailable or no longer represent reasonable royalty value, MMS will amend this section to establish a substitute valuation method.

(b) You may calculate value using the gross proceeds from the sale of your oil under an arm's-length contract. If you use this method, the provisions of this paragraph (b) apply.

(1) You may adjust the gross proceeds-based value calculated under this section for appropriate transportation costs under § 206.61(c) of this subpart.

(2) If you dispose of your oil under an exchange agreement and then sell the oil that you receive in return under an arm's-length contract, value is the sales price adjusted for appropriate quality differentials and transportation costs.

(3) MMS may monitor, review, or audit the royalty value that you report under this paragraph (b).

(i) MMS may examine whether your oil sales contract reflects the total consideration actually transferred either directly or indirectly from the buyer to you. If it does not, then MMS may require you to value the oil sold under that contract at the total consideration you received.

(ii) MMS may require you to certify that the arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

(4) You must base value on the highest price that you can receive through legally enforceable claims under your oil sales contract. If you fail to take proper or timely action to receive prices or benefits you are entitled to, you must base value on that obtainable price or benefit.

(i) In some cases you may apply timely for a price increase or benefit allowed under your oil sales contract, but the purchaser refuses your request. If this occurs, and you take reasonable documented measures to force purchaser compliance, you will owe no additional royalties unless or until you receive monies or consideration resulting from the price increase or additional benefits. This paragraph (b)(4) does not permit you to avoid your royalty payment obligation if a purchaser fails to pay, pays only in part, or pays late.

(ii) Any contract revisions or amendments that reduce prices or benefits to which you are entitled must be in writing and signed by all parties to your arm's-length contract.

(c) You may use a major portion value that MMS will calculate. If you use this method, the provisions of this paragraph apply.

(1) MMS will calculate and publish the major portion value for each designated area within 120 days of the end of each production month.

(2) Each designated area includes all Indian leases in that area. MMS will publish in the **Federal Register** a list of the leases in each designated area. The designated areas are:

(i) Alabama-Coushatta;
(ii) Blackfeet Reservation;
(iii) Crow Reservation;
(iv) Fort Belknap Reservation;
(v) Fort Peck Reservation;
(vi) Jicarilla Apache Reservation;
(vii) MMS-designated groups of counties in the State of Oklahoma;
(viii) Michigan Agency;
(ix) Navajo Reservation;
(x) Northern Cheyenne Reservation;
(xi) Southern Ute Reservation;
(xii) Turtle Mountain Reservation; (xiii) Ute Mountain Ute Reservation;
(xiv) Uintah and Ouray Reservation;
(xv) Wind River Reservation; and
(xvi) Any other area that MMS designates. MMS will publish any new area designations in the **Federal Register**.

(3) MMS will calculate the major portion value from information submitted for production from leases in the designated area on Form MMS–2014, Report of Sales and Royalty Remittance.

(i) MMS will use information from Form MMS–4416, Indian Crude Oil Valuation Report, to verify values reported on Form MMS–2014. See § 206.61(d)(5) of this subpart for further requirements related to Form MMS–4416.

(ii) MMS will arrange the reported values (adjusted for location and quality) from highest to lowest. The major portion value is the value of the 75th percentile (by volume, including volumes taken in kind) starting from the lowest value.

(4) MMS will not change the major portion value after it notifies you of that value for your leases, unless an administrative or judicial decision requires MMS to make a change.

(d) On Form MMS–2014, you must initially report and pay the value of production at the higher of the index-based or gross proceeds-based values determined under paragraphs (a) or (b) of this section, respectively. You must file this report and pay MMS by the date royalty payments are due for the lease. MMS will inform you of its calculated major portion value for the designated area. If this value exceeds the value you initially reported for the production month, you must submit an amended Form MMS–2014 with the higher value within 30 days after you receive notice from MMS of the major portion value. MMS will specify, in the *MMS Oil and Gas Payor Handbook*, additional requirements for reporting under paragraphs (a), (b), or (c) of this section. You will not begin to accrue late-payment interest under 30 CFR 218.54 on any underpayment until the due date of your amended Form MMS–2014.

§ 206.53 What other general responsibilities do I have for valuing oil?

(a) On request, you must make available sales and volume data for production you sold, purchased, or obtained from the designated area or from nearby fields or areas. This includes sales and volume data from fee and State leases within the designated area or from nearby fields or areas. You must make this data available to the authorized MMS or Indian representatives, the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information.

(b) You must retain all data relevant to the determination of royalty value. Recordkeeping requirements are found at 30 CFR 207.5. MMS or the lessor may review and audit such data you possess, and MMS will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this section.

(c) If MMS determines that you have not properly determined value, you must:

(1) Pay the difference, if any, between the royalty payments you made and those that are due based upon the value MMS establishes;

(2) Pay interest on the difference computed under 30 CFR 218.54; and

(3) If you are entitled to a credit, MMS will tell you how to take that credit.

(d) You must place oil in marketable condition and market the oil for the mutual benefit of yourself and the lessor at no cost to the Indian lessor, unless the lease agreement or this part provides otherwise. In the process of marketing the oil or placing it in marketable condition, your gross proceeds may be reduced because services are performed on your behalf that normally would be your responsibility. If this happens, and if you valued the oil using gross proceeds under § 206.52(b), you must increase value to the extent that your gross proceeds are reduced.

§ 206.54 May I ask MMS for valuation guidance?

You may ask MMS for guidance in determining value. You may propose a value method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. MMS will promptly review your proposal and provide you with the guidance you request.

§ 206.55 Does MMS protect information I provide?

MMS will keep confidential, to the extent allowed under applicable laws and regulations, any data you submit that is privileged, confidential, or otherwise exempt.

(a) Certain information you submit to MMS to support valuation proposals, including transportation allowances, is exempt from disclosure under Federal law.

(b) All requests for information about determinations made under this part must be submitted under the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

(c) The Indian lessor has the right to obtain directly from you or MMS any information to which it may be lawfully entitled under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

4. Newly redesignated section 206.60 is revised to read as follows:

§ 206.60 What transportation allowances and other adjustments apply to the value of oil?

(a) *Transportation allowances.* (1) You may deduct a transportation allowance from the value of oil determined under § 206.52 of this part as explained in the following table.

If you value oil	And	Then
Based on index pricing under § 206.52(a).		You may claim a transportation allowance only under the limited circumstances listed at § 206.61(c)(2).
Based on gross proceeds under § 206.52(b).	The movement of the oil is not gathering.	MMS will allow a deduction for the reasonable, actual costs to transport oil from the designated area boundary to the sales point.

(i) See § 206.61(a) and (b) for information on how to determine the transportation allowance.

(ii) [Reserved]

(2) You may not deduct a transportation allowance for transporting oil:

(i) Taken as Royalty-In-Kind and delivered to the lessor in the designated area;

(ii) When the sale or transfer point occurs within the designated area; or

(iii) When you value oil based on a major portion value under § 206.52(c).

(b) *Are there limits on my transportation allowance?* (1) Except as provided in paragraph (b)(2) of this section:

If you determine the value of the oil based on	Then your transportation allowance deduction may not exceed
Index pricing under § 206.52(a)	50 percent of the average of the five highest daily NYMEX futures settle prices (Cushing, Oklahoma) for the Domestic Sweet crude oil contract for the prompt month.
Gross proceeds under § 206.52(b)	50 percent of the value of the oil at the point of sale.

(2) If you ask, MMS may approve a transportation allowance deduction in excess of the limitation in paragraph (b)(1) of this section. You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. You may never reduce the royalty value of any production to zero.

(c) *Must I allocate transportation costs?* You must allocate transportation costs among all products produced and transported as provided in § 206.61 of this subpart. You may not allocate transportation costs from production for which those costs were incurred to production for which those costs were not incurred. You must express transportation allowances for oil as dollars per barrel.

(d) *What other adjustments apply when I value production based on index pricing?* If you value oil based on index pricing under § 206.52(a) of this subpart, you must adjust the value for the differences in location and quality between oil at the designated area boundary and the index pricing point outside the designated area as specified under § 206.61(c). If the oil is produced in the designated area that includes Cushing, Oklahoma, you are only entitled to a quality adjustment. See § 206.61 for more information on adjusting for location and quality differences.

(e) *What additional payments may I be liable for?* If MMS determines that you underpaid royalties because an excessive transportation allowance or other adjustment was claimed, then you must pay any additional royalties, plus interest under 30 CFR 218.54. You also could be entitled to a credit with interest if you understated the transportation allowance or other adjustment. If you take a deduction for transportation on Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate line item, MMS may assess you an amount under § 206.61(e) of this subpart.

5. Newly redesignated § 206.61 is amended by revising the section heading; removing paragraphs (b)(5) and (c)(2)(viii); redesignating paragraphs (c) through (g) as paragraphs (d) through (h); adding new paragraphs (c) and (d)(5); and revising newly redesignated

paragraphs (d)(1)(i), (d)(2)(i), (d)(4) and (g) to read as follows:

§ 206.61 How do lessees determine transportation allowances and other adjustments?

* * * * *

(c) *What adjustments apply when lessees use index pricing?* (1) When you use index pricing to calculate the value of production under § 206.52(a), you must adjust the index price for location/quality differentials. Your adjustments must reflect the reasonable oil value differences in location and quality between the designated area boundary and the market center and between the market center and the index pricing point outside the designated area. The adjustments that might apply to your production are listed in paragraphs (c)(1)(i) through (iv) of this section. See paragraphs (c)(2) and(c)(3) of this section to determine which adjustments you must use based on how you dispose of your production. These adjustments are:

(i) A location differential to reflect the difference in value of crude oils at the index pricing point and the appropriate market center. For any production month, the location differential is the difference between the average spot prices for that month for the respective crude oils at the index pricing point and at the market center. Use MMS-approved publications to determine average spot prices and calculate the location differential;

(ii) An express location/quality differential under your arm's-length exchange agreement that reflects the difference in value of crude oil at the designated area boundary and the market center;

(iii) A location/quality differential reflecting the crude oil value difference between the designated area boundary and the market center that MMS will publish annually based on data it collects on Form MMS–4416. MMS will calculate that differential using a volume-weighted average of the differentials reported on Form MMS–4416 for the previous reporting year. MMS may publish separate rates for various crude oil qualities that are identified separately on Form MMS–4416 (for example, sweet vs. sour oil, or oil in different gravity ranges). MMS will publish differentials that reflect both a location differential based on the market center/designated area pairs and a quality differential based on the type of crude oil. MMS will publish these differentials in the **Federal Register** by the effective date of the final regulation and by January 31 of all subsequent years. You must use MMS-published rates on a calendar year basis—apply them to January through December production reported February through the following January; and

(iv) Actual transportation costs from the designated area boundary to the market center determined under this section.

(2) To determine which adjustments and transportation allowances apply to your production, use the following table.

If you	And	Then
Dispose of your production under an arm's-length exchange agreement.	That exchange agreement has an express location differential to reflect the difference in value between the designated area boundary for the lease and the associated market center.	Adjust your value using paragraphs (c)(1)(i) and (ii) of this section.
Move your production from a designated area directly to an MMS-identified market center.	The market center is also the index pricing point.	Use paragraph (c)(1)(iii) to determine the quality differential and paragraph (c)(1)(iv) to deduct the actual transportation costs to that market center, subject to this paragraph (c)(2)(i).
Do not move your production from a designated area to an MMS-identified market center.	You instead move it directly to an alternate disposal point (for example, your own refinery).	Adjust your value using paragraphs (c)(1)(i) and (iv) of this section, subject to this paragraph (c)(2)(ii).
Transport or dispose of your production under any other arrangement.		Adjust your value using paragraphs (c)(1)(i) and (iii).

(i) If you move your production from a designated area directly to an MMS-identified market center that is also the index pricing point, use the separate MMS-published quality differential between oil similar to yours and the oil used for index pricing for purposes of applying paragraph (c)(1)(iii). For purposes of paragraph (c)(1)(i) of this section, the market center is the MMS-identified market center nearest the lease where there is a published spot price for crude oil of like quality to the oil being valued. The spot price you use must be for like-quality oil.

(ii) The market center for purposes of paragraph (c)(1)(iv) of this section is the alternate disposal point.

(3) If an MMS-calculated differential under paragraph (c)(1)(iii) of this section does not apply to your oil, either due to location or quality differences, you must request MMS to calculate a differential for you.

(i) After MMS publishes its annual listing of location/quality differentials, you must file your request in writing with MMS for an MMS-calculated differential.

(ii) You must demonstrate why the published differential does not adequately reflect your circumstances.

(iii) MMS will calculate such a differential when it receives your request or when it discovers that the differential published under paragraph (c)(1)(iii) of this section does not apply to your oil. MMS will bill you for any additional royalties and interest due. If you file a request for an MMS-calculated differential within 30 days after MMS publishes its annual listing of location/quality differentials, the calculated differential will apply beginning with the effective date of the published differentials. Otherwise, the MMS-calculated differential will apply beginning the first day of the month following the date of your application. In this case the published differentials will apply in the interim and MMS will not refund any overpayments you made due to your failure to timely request MMS to calculate a differential for you.

(iv) Send your request to: Minerals Management Service, Royalty Management Program Royalty Valuation Division P.O. Box 25165, Mail Stop 3150 Denver, CO., 80225–0165.

(4) For the differentials referenced in paragraph (c)(1)(i) of this section, periodically MMS will publish in the **Federal Register** a list of MMS-approved publications. MMS's decision to approve a publication will be based on criteria which include but are not limited to:

(i) Publications buyers and sellers frequently use;

(ii) Publications frequently mentioned in purchase or sales contracts;

(iii) Publications which use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of crude oil; and

(iv) Publications independent from MMS, other lessors, and lessees.

(5) Any publication may petition MMS to be added to the list of acceptable publications.

(6) MMS will specify the tables you must use in the publications to determine the associated location differentials.

(7) Periodically, MMS will publish in the **Federal Register** a list of market centers. MMS will monitor market activity and, if necessary, modify the list of market centers and will publish such modifications in the **Federal Register**. MMS will consider the following factors and conditions in specifying market centers:

(i) Points where MMS-approved publications publish prices useful for index purposes;

(ii) Markets served;

(iii) Pipeline and other transportation linkage;

(iv) Input from industry and others knowledgeable in crude oil marketing and transportation;

(v) Simplification; and

(vi) Other relevant matters.

(d) *Reporting requirements—(1) Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraphs (d)(1)(v) and (d)(1)(vi) of this section, you must submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, before, or at the same time as, you report the transportation allowance determined under an arm's-length contract on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due is considered to be timely received.

* * * * *

(2) *Non-arm's-length or no contract.* (i) With the exception of those transportation allowances specified in paragraphs (d) (2) (v) and (d) (2) (vii) of this section, you must submit an initial Form MMS–4110 before, or at the same time as, you report the transportation allowance determined under a non-arm's-length contract or no-contract situation on Form MMS–2014. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due is considered to be timely received. The initial report may be based upon estimated costs.

* * * * *

(4) *What additional requirements apply to Form MMS–2014 reporting?* You must report transportation allowances, location differentials, and quality differentials as separate lines on Form MMS–2014, unless MMS approves a different reporting procedure. MMS will provide additional reporting details and requirements in the *MMS Oil and Gas Payor Handbook.*

(5) *What information must lessees provide to support index pricing adjustments, and how is it used?* You must submit information on Form MMS–4416 related to all of your crude oil production from designated areas. You initially must submit Form MMS–4416 no later than [insert the date 2 months after the effective date of this rule] and then by October 31 [insert the year this regulation takes effect], and by October 31 of each succeeding year. In addition to the annual requirement to file this form, you must file a new form each time you execute a new exchange or sales contract involving the production of oil from an Indian lease. However, if the contract merely extends the time period a contract is in effect without changing any other terms of the contract, this requirement to file does not apply. All other purchasers of crude oil from designated areas are likewise subject to the requirements of this paragraph (d)(5).

* * * * *

(g) *Actual or theoretical losses.* Notwithstanding any other provision of this subpart, for other than arm's-length contracts, no cost is allowed for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses.

* * * * *

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A

BILLING CODE 4310–MR–P

Indian Crude Oil Valuation Report

1. Reporter Name:_____ Applies to Multiple leases ☐

Address: _____ (attach list of leases)

City, State _____ Zip _____ Designated Area _____

Reporting Period _____19____ to _____ 19____ MMS PayorCode☐☐☐☐☐

2. Contract Type and I.D. ☐ Outright Purchase, ☐ Buy/Sell, ☐ Non-Cash Exchange, ☐ Sale subject to balancing ☐ Outright Sale

Contract Number _____ Multiple party exchange ☐

3. Other Contract Party Name _____ Other Contract Party's MMS Payor Code (if available) ☐☐☐☐☐

4. Contract Term ☐No change from last filing

Effective Date: ___/___/___ (MM/DD/YY) Terms: ☐ month-to-month extensions,

Initial Term: _____ (Months) ☐ fixed duration

Expiration Date: ___/___/___ (MM/DD/YY)

	Oil You Sold or Transferred or Refined	Oil You Received or purchased
5. Title Transfer Location	☐ MMS Lease Number ☐☐☐-☐☐☐☐☐☐-☐ ☐ LACT meter number _____ ☐ Tank battery number _____ ☐ Market Center _____ ☐ Refinery Gate _____ ☐ Other _____ Cost of transporting to title transfer point (see instructions)___.____ $/bbl. Describe terms _____ _____ _____	☐ MMS Lease Number ☐☐☐-☐☐☐☐☐☐-☐ ☐ LACT meter number _____ ☐ Tank battery number _____ ☐ Market Center _____ ☐ Refinery Gate _____ ☐ Other _____ Cost of transporting to title transfer point (see instructions)___.____ $/bbl. Describe terms _____ _____ _____
6.Volume Terms	☐ All Available (_____ Est. B/D) ☐ Fixed (_____ Fixed B/D)	☐ All Available (_____ Est. B/D) ☐ Fixed (_____ Fixed B/D)
7. Pricing Terms	☐ Posted Price Posting Company Name(s) _____ Poster=s Crude Type/Designation _____ Premium/Deduct to Posting: _____ $/BBL ☐ Index Price: Index used_____ Source_____ ☐ Calculated Price (Describe)_____ _____ _____ ☐ Fixed Price: _____._____ $/BBL ☐ Other (Describe)_____ _____ _____	☐ Posted Price Posting Company Name(s) _____ Poster=s Crude Type/Designation _____ Premium/Deduct to Posting: _____ $/BBL ☐ Index Price: Index used_____ Source_____ ☐ Calculated Price (Describe)_____ _____ _____ ☐ Fixed Price: _____._____ $/BBL ☐ Other (Describe)_____ _____ _____
8. Crude Oil Quality and Adjustments	API Gravity: __.__ _ API Sulfur Content __.__ % Paraffin Content __.__% API Gravity Adjustments: ☐ No Deductions ☐ Deemed _____ _ API, _____ $/BBL ☐ Actual _____ _ API, _____ $/BBL Other Quality Adjustments: ☐ More than one Description:_____ (☐ Deemed or ☐ Actual) Adjustments: ____.___$/BBL	API Gravity: __.__ _ API Sulfur Content __.__ % Paraffin Content __.__% API Gravity Adjustments: ☐ No Deductions ☐ Deemed _____ _ API, _____ $/BBL ☐ Actual _____ _ API, _____ $/BBL Other Quality Adjustments: ☐ More than one Description:_____ (☐ Deemed or ☐ Actual) Adjustments: ____.___$/BBL

Have you received or paid any other consideration, in any form, for the sale, purchase, or exchange of this crude oil, either at this location or at any other location? (☐ Yes, or ☐ No) If Yes, Explain: _____

Authorized Signature_____ **and Date**_____

Form MMS-4416

Step-by-Step Instructions for MMS Form 4416

This form is designed to collect valuation and location/quality differential information about oil produced from Indian leases to determine its market value. You should fill out this form if you produce, sell, purchase, exchange, or refine oil produced from Indian lands. A separate form should be used for each contract. If a contract refers to more than one lease, one form may be filled out provided a list of leases it covers is attached to it.

1. **Company (Reporter) Information**

Fill out your company name, address, and zip code. Indicate whether the contract you are reporting on applies to more than one lease by placing a check in the box in the upper right corner of this section. If more than one form is needed to provide the required information (e.g. multiple party exchange agreement) the address may be omitted from subsequent forms provided that the cover form containing address is attached.

-Write in the reporting period this form covers.

-Write in the name of the Reservation(s) where the oil production on this form applies.

-Write in your five-digit MMS payor code on each form submitted (if your company does not have a payor code MMS will assign one to you).

2. **Contract Type:** Check the appropriate box *(or boxes if more than one applies)* to indicate the contract type. [**Outright Purchases** *are made at arm's-length and no additional consideration is paid (in this transaction or in any other transaction).* **Buy/Sell** *is an exchange where monetary value is assigned to settle both transactions in the exchange.* **Non-Cash Exchange** *is a transaction where no monetary value is assigned to either transaction in the exchange; instead, a dollar amount is usually assigned to the difference between the two values.* **Sales Subject to Balancing** *are transactions tied to an overall exchange agreement (either expressed or implied) where volumes purchased and sold by each party are in balance.* **Outright Sales** *are made at arm's length and no additional consideration is received (in this transaction or in any other transaction).* If this oil transaction is part of a multiple party (three or more) exchange agreement, check the box to the left of the contract number titled **Multiple party exchange**. Also fill in the **Contract Number** -- use the I.D. that would allow a third party to clearly identify the document.

3. **Other Contract Party Name:** Write the name of the other party to the contract involving the Indian oil. If that party has an MMS payor code, write it in the space provided (if known). If the transaction is part of a multiple party exchange, attach a list of the other parties involved in the exchange (write their MMS payor code, if known, next to each party's name).

4. **Contract Term:** *(Note: if you are filing this contract under the annual Oct. 31 reporting requirement and none of the required entries in steps 4 - 8 have changed from the last report (filed in the last 12 months), check the box in the lower left corner of section 4. If no change has occurred except to extend the expiration date of the contract, check the box in the lower left corner of section 4 and fill in the new expiration date in this section. Make sure that an authorized representative signs and dates the form. Otherwise complete the form as instructed below).* Fill in the date the contract started, and the initial term in months. Check the contract term that applies to this contract. If the contract is of fixed duration, fill in the expiration date in the space provided.

Items 5-8

The information on the rest of the form is divided into two columns. The left column should be used to record information about oil you produced *and* either sold, transferred in an exchange or buy/sell, or refined. The right column should be used for oil that you purchased or you received in an exchange or buy/sell *(i.e., you will use both columns for oil that is part of an exchange agreement, part of a buy/sell, or part of a sale subject to balancing; you will use one column for oil you produced and refined, produced and sold outright or purchased outright).*

5. **Title Transfer Location:** Check the appropriate box to indicate where title transfer occurred for oil you sold or transferred and/or where you took title to oil you purchased or received under an exchange. Where title transferred at the Indian or federal lease, write in the 10-digit MMS lease number. Enter the location where title transferred *(if the title transfer involves production from more than one Indian lease, provide the list of the leases contributing to the production or if the transaction involves the production stored in a tank battery, the tank battery number will be adequate).*

In the space provided, fill in the cost in $/barrel of transporting oil you produced from the production location to the point where title transfers *(do not include the cost of gathering or the cost of transporting oil within the boundaries of an Indian reservation).* If the contract so specifies (or this information is known to you) fill in transportation costs for oil you received or sold. Describe the terms (i.e. starting location, ending location) involved in the transportation of the oil. Use MMS designated areas (as defined in the Indian oil valuation regulations), MMS aggregation points (as defined in the Federal oil valuation regulations) or State/ Section/Township/Range. Where oil traverses more than one MMS aggregation point be sure to include all segments of the transportation route. Attach a separate sheet, if needed, to adequately describe the transportation.

Step-by-Step Instructions for MMS Form 4416

6. **Volume Terms:** If your contract states that all available oil will be purchased, check the "all available box and write in the estimated barrels per day of oil (Disposed/received). Otherwise, check the "fixed" box and write in the fixed volume (disposed/received) specified in the contract.

7. **Pricing Terms:** There are four pricing designations -

Posted Price: If the contract references a posted price, write in the name(s) of the company or companies posting(s) and the crude oil referenced in the posting(s). List any premium(+) or deduction (-) to the referenced price(s).

Index Price: If an index price is used, check the box marked index price. Identify the index price used and the source publication(s) in the space provided. Write the details of how the index price is calculated in the space provided under *calculated price* below.

Calculated Price: If the contract uses a formula to determine price, completely describe the method used. Attach an additional sheet if necessary.

Fixed Price: If the price is set through the duration of the contract, list the price per barrel.

Other: Fully describe the method used if it is not covered under any of the above pricing provisions. Attach an additional sheet if necessary.

8. **Crude Oil Quality and Adjustments:**

Quality Measures:

Fill in the **API Gravity** of oil disposed and/or received to the nearest tenth of a degree. Fill in the **Sulfur Content** of the oil you disposed and/or received to the nearest tenth of a percent. Fill in the **Paraffin content** of the oil you disposed and/or received to the nearest tenth of a percent.

Adjustments:

API Gravity: Check the appropriate box. If the gravity is deemed, write the deemed API gravity to the nearest tenth of a degree and any corresponding price adjustment from the contract. If an actual reference gravity is used to make an adjustment, write the gravity to the nearest tenth of a degree and the corresponding price adjustment from the contract.

Other Quality Adjustment(s): If only one other quality adjustment is made, use the space provided in this section to describe the quality adjustment, indicate whether the measure is actual or deemed, and the dollar per barrel adjustment for the quality measure. If your contract contains more than one other quality adjustment, check the box and attach a separate sheet to fully describe the quality adjustments. Indicate the type of adjustment and whether the quality measured is actual or deemed. Also, provide the adjustment amount in dollars per barrel for each adjustment made.

Authorized Signature: If the form has not captured all compensation provided in connection with the crude oil reported on this form, check the yes box and provide an explanation in the space provided. If the form accurately reports all the compensation you received or paid for oil reported on this form, check no. An individual authorized to represent the party to the contract you are summarizing must sign the form. Write the date the form was completed in the space provided.

BILLING CODE 4310–MR–C

APPENDIX B—NYMEX INDEX PRICE BASIS

[January 1997 Production and Sale]

NYMEX trade date	NYMEX Delivery (prompt) month	NYMEX daily	Close
Jan–08–97	Feb. 1997	$26.62	
Jan–06–97	Feb. 1997	26.37	
Jan–07–97	Feb. 1997	26.23	
Jan–10–97	Feb. 1997	26.09	
Jan–15–97	Feb. 1997	25.95	
Dec–31–97	Feb. 1997	25.92	
Jan–02–97	Feb. 1997	25.69	
Jan–09–97	Feb. 1997	25.69	
Jan–03–97	Feb. 1997	25.59	
Jan–16–97	Feb. 1997	25.52	
Jan–17–97	Feb. 1997	25.41	
Dec–30–97	Feb. 1997	25.37	
Jan–20–97	Feb. 1997	25.23	
Dec–27–97	Feb. 1997	25.22	
Jan–13–97	Feb. 1997	25.19	
Jan–14–97	Feb. 1997	25.11	
Dec–24–97	Feb. 1997	25.10	
Dec–20–97	Feb. 1997	25.08	
Dec–26–97	Feb. 1997	24.92	
Jan–21–97	Feb. 1997	24.80	
Dec–23–97	Feb. 1997	24.79	
NYMEX Average Price for five high daily settle prices for January 1997 production.		26.25	

APPENDIX C—WTI SPOT PRICE, MARKET CENTER: CUSHING, OK

[January 1997 Production and Sale]

Cushing WTI spot trade date	Cushing WTI spot delivery assess. month	Final cushing WTI spot	(Mean)
Dec–26–96	Feb. 1997	$24.88	
Dec–27–96	Feb. 1997	25.09	
Dec–30–96	Feb. 1997	25.23	
Dec–31–96	Feb. 1997	25.78	
Jan–02–97	Feb. 1997	25.80	
Jan–03–97	Feb. 1997	25.59	
Jan–06–97	Feb. 1997	26.34	
Jan–07–97	Feb. 1997	26.28	
Jan–08–97	Feb. 1997	26.53	
Jan–09–97	Feb. 1997	26.30	
Jan–10–97	Feb. 1997	26.18	
Jan–13–97	Feb. 1997	25.16	
Jan–14–97	Feb. 1997	25.11	
Jan–15–97	Feb. 1997	25.88	
Jan–16–97	Feb. 1997	25.41	
Jan–17–97	Feb. 1997	25.28	
Jan–20–97	Feb. 1997	25.14	
Jan–21–97	Feb. 1997	24.57	
Jan–22–97	Feb. 1997	24.32	
Jan–23–97	Feb. 1997	23.97	
Jan–24–97	Feb. 1997	24.05	
Cushing WTI Avg Spot Price for January 1997		25.38	

APPENDIX D—WTI SPOT PRICE, MARKET CENTER: MIDLAND, TX

[January 1997 Production and Sale]

Midland WTI spot trade date	Midland WTI spot delivery assess. month	Final Midland WTI spot	(Mean)
Dec–26–96	Feb. 1997	$24.88	
Dec–27–96	Feb. 1997	25.08	
Dec–30–96	Feb. 1997	25.08	
Dec–31–96	Feb. 1997	25.77	
Jan–02–97	Feb. 1997	25.80	
Jan–03–97	Feb. 1997	25.58	
Jan–06–97	Feb. 1997	26.33	

APPENDIX D—WTI SPOT PRICE, MARKET CENTER: MIDLAND, TX—Continued

[January 1997 Production and Sale]

Midland WTI spot trade date	Midland WTI spot delivery assess. month	Final Midland WTI spot	(Mean)
Jan–07–97	Feb. 1997	26.24	
Jan–08–97	Feb. 1997	26.48	
Jan–09–97	Feb. 1997	26.18	
Jan–10–97	Feb. 1997	26.02	
Jan–13–97	Feb. 1997	24.99	
Jan–14–97	Feb. 1997	24.88	
Jan–15–97	Feb. 1997	25.65	
Jan–16–97	Feb. 1997	25.10	
Jan–17–97	Feb. 1997	24.94	
Jan–20–97	Feb. 1997	24.80	
Jan–21–97	Feb. 1997	24.19	
Jan–22–97	Feb. 1997	23.88	
Jan–23–97	Feb. 1997	23.58	
Jan–24–97	Feb. 1997	23.66	
WTI Midland Avg Spot Price for January 1997		25.20	

APPENDIX E—NYMEX-BASED OIL ROYALTY COMPUTATION, NAVAJO NATION, MARKET CENTER: MIDLAND, TX

[January 1997 Production and Sale]

Average of Five High Daily NYMEX Settle Prices		$26.25
Cushing/Market Center Location Differential:		
WTI Cushing Average Spot Price	$25.38	
WTI Midland Average Spot Price	25.20	
WTI Midland over (under) WTI Cushing		(.18)
Market Center/Designated Area Location and Quality Differential (Exchange Agreement):		
Transportation and Quality Differential from Midland to Navajo reservation		(.25)
Royalty Value per barrel		25.82

[FR Doc. 98–3597 Filed 2–11–98; 8:45 am]
BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5966–5]

Clean Air Act Withdrawal of Proposed Approval of Amendment to Title V Operating Permits Program and Proposed Approval of Amendments to Title V Operating Permits Program; Pima County Department of Environmental Quality, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule; proposed rule.

SUMMARY: The EPA withdraws its proposed approval (62 FR 16124, April 4, 1997) of revisions to the Pima County Department of Environmental Quality (''Pima'' or ''County'') title V operating permits program. In this document EPA also proposes approval of the following revisions to the operating permits program submitted by the Arizona Department of Environmental Quality (''DEQ'') on behalf of Pima: a revision to the fee provisions; and a revision that will defer the requirement for minor sources subject to standards under sections 111 or 112 of the Act to obtain title V permits, unless such sources are in a source category required by EPA to obtain title V permits.

DATES: Comments on this proposed action must be received in writing by March 16, 1998. Comments should be addressed to the contact indicated below.

ADDRESSES: Copies of Pima's submittals and other supporting information used in developing this proposed approval are available for inspection (AZ–Pima–97–1–OPS and AZ-Pima-97–2–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region 9; 75 Hawthorne Street; San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas (telephone 415–744–1252), Mail Code AIR–3, U.S. Environmental Protection Agency, 75 Hawthorne Street; San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (57 FR 32250; July 21, 1992). These rules are codified at 40 CFR part 70. Title V requires states to develop and submit to EPA, by November 15, 1993, programs for issuing these operating permits to all major stationary sources and to certain other sources. The EPA's program review occurs pursuant to section 502 of the Act, which outlines criteria for approval or disapproval.

On November 15, 1993, Pima's title V program was submitted. EPA proposed interim approval of the program on July 13, 1995 (60 FR 36083). The fee provisions of the program were found to be fully approvable. On November 14, 1995, in response to changes in state law, Pima amended its fee provisions under Chapter 12, Article VI of Title 17 of the Pima County Air Quality Control Code. Those changes were submitted to

EPA on January 14, 1997, after it promulgated final interim approval of Pima's title V program (61 FR 55910, October 30, 1996). EPA subsequently proposed to approve Pima's revised fee provisions (62 FR 16124, April 4, 1997). On July 17, 1997, EPA received a submittal from ADEQ on behalf of Pima requesting that EPA approve a revision to the applicability provisions of Pima's title V program.

II. Withdrawal of April 4, 1997 Proposed Action

Because EPA's evaluation of Pima's title V program fee provisions takes into account the numbers and types of sources requiring permits, EPA believes that, in light of the proposed changes to Pima's applicability provisions, it must reconsider its proposed action. EPA is therefore withdrawing its previous proposal to approve revisions to Pima's fee provisions and will in this notice evaluate the approvability of the fee changes in the context of the submitted changes to program applicability.

III. Proposed Action

EPA is proposing to approve the submitted amendments to the applicability and fee provisions of Pima's title V operating permits program. A description of the submitted materials and an analysis of the amendments are included below.

A. Applicability

1. Submitted Materials

The amendment to the applicability provisions of Pima's title V program was submitted by the Arizona DEQ on July 17, 1997. The submittal includes the deletion of the term ''Title V Source'' from Pima County Air Quality Control Code (PCC) 17.04.340.133, proof of adoption, evidence of necessary legal authority, evidence of public participation including comments submitted on the rulemaking, and a supplemental legal opinion from the County Attorney regarding the legal adequacy of Pima's title V program, including implementation of section 111 and 112 of the Clean Air Act. In a letter dated November 7, 1997, Pima clarified which sections of its title V program it wished to have rescinded and which sections approved, and on December 2, 1997, Pima sent a letter to EPA requesting approval under section 112(l) of the Clean Air Act for the delegation of unchanged section 112 standards applicable to sources that are not required to obtain title V permits.

2. Analysis of Submission

As approved by EPA, Pima's title V program requires nonmajor sources subject to a standard under section 111 or section 112 to obtain a title V permit. While not currently required by part 70, this provision is fully approvable. On November 14, 1995, Pima revised its regulations in order to allow nonmajor sources regulated under sections 111 and 112 to defer or be exempted from the title V permit requirement to the extent allowed by the Administrator. This was accomplished by deleting the term ''Title V Source,'' which was defined to include nonmajor sources subject to section 111 and 112 standards, from PCC 17.04.340. With this change, only those sources required to obtain a Class I (title V) permit, (i.e., major sources, solid waste incinerators required to obtain a permit pursuant to section 129(e) of the CAA, and sources required by the Administrator to obtain a permit), are subject to the District's title V program. Non-major sources, including those regulated under sections 111 and 112 of the CAA, are deferred from the requirement to obtain a Class I/title V permit, to the extent allowed by the Administrator. See PCC 17.12.140 and the supplemental County Attorney's opinion dated June 24, 1997.

The approach taken in Pima's revised program is consistent with the minimum criteria specified by part 70. EPA is therefore proposing to approve the above described changes to Pima's title V program.

3. Amendments to the Applicability Provisions in Pima County's Title V Program

If EPA finalizes its approval of the proposed amendments to Pima County's applicability provisions, Rule 17.04.340.240 (definition of ''title V source'' adopted September 28, 1993) will be removed from the County's title V program.

4. Program for Delegation of Section 112(l) Standards as Promulgated

As EPA stated in its proposed approval of Pima's original title V program, requirements for approval under 40 CFR 70.4(b) encompass the section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Because Pima's original submittal included all sources subject to section 112 standards in the universe of sources subject to its title V permitting requirements, EPA's approval of Pima's program under section 112(l) extended to section 112 standards as applicable to minor as well as major sources.

The change in applicability of Pima's title V program affects EPA's approval under section 112(l) of Pima's program for accepting delegation of section 112 standards as promulgated. If the proposed changes are approved, Pima will not be issuing part 70 permits to nonmajor sources (unless such sources are designated by EPA being required to obtain a part 70 permit). As a result, EPA's 112(l) delegation, which relied upon part 70 permits as the vehicle for implementing section 112 standards, would no longer cover minor sources.

In a letter dated December 2, 1997, Pima specifically requested approval under section 112(l) of a program for delegation of unchanged section 112 standards applicable to sources that are not subject to mandatory permitting requirements under title V. (See letter from David Esposito, Director, PDEQ to David Howekamp, Director, Air and Toxics [sic] Division, EPA Region IX.) Pima's request for approval under section 112(l) for non-part 70 sources references the information contained in its original title V program submittal as demonstration that Pima meets the criteria under section 112(l) and 40 CFR 63.91 for approval of a delegation program. EPA is therefore proposing to expand its approval under section 112(l) to include Pima's program for delegation of section 112 standards as they apply to those sources not required to obtain a title V permit.

B. Fees

1. Submitted Materials

An amendment to the fee provisions of Pima's title V program was submitted by the Arizona DEQ on January 14, 1997. The submittal includes the revised fee regulations (Chapter 12, Article VI of Title 17 of the Pima County Air Quality Control Code as amended on November 14, 1995), a technical support document, and a legal opinion by the County Attorney. Additional materials, including proof of adoption and a commitment to provide periodic updates to EPA regarding the status of the fee program, were submitted on February 26, 1997. In a letter dated July 25, 1997, Pima submitted a detailed discussion of the expected costs of and anticipated revenue from its title V program. The County's analysis is based on the amended applicability provisions adopted on November 14, 1995, which EPA is also proposing to approve today.

2. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a

detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). Pima has submitted a detailed fee analysis that demonstrates the fees it will collect under the amended rules are adequate to cover program costs.

Title V emission fees. Pima's fee provisions require that the owner or operator of each source required to obtain a title V permit shall pay an annual emissions fee equal to $28.15 per year per ton of actual emissions of all regulated air pollutants, or a specified minimum, whichever is greater. See 17.12.510.C. and 17.12.510.C.5. The regulations also require a yearly adjustment in the emissions fee rate to reflect the increase, if any, in the Consumer Price Index. See 17.12.510.C.4.

Emission fees are used by Pima to cover the direct and indirect costs of the title V related activities not covered by title V permit fees. These activities are: (1) Part 70 program development and implementation; (2) issuance of title V permits to existing sources; (3) part 70 source compliance, including inspection services; and (4) part 70 business assistance, which helps sources determine and meet their obligations under part 70. Pima estimates the annual cost of these activities in the first three years of program implementation to range between $83,562 and $87,674. Based upon the fall 1996 dollar per ton value ($35.78), invoicing records and emissions estimates, Pima projects it will collect $98,275 in emissions fees annually. For more detail, see July 25, 1997 letter from David Esposito, Director of Pima Department of Environmental Quality, to Ginger Vagenas, US E.P.A.

Permit fees. Pima's fee provisions require that applicants for permits to construct and operate that are subject to title V must pay the total actual cost of reviewing and acting upon applications for permits and permit revisions. See 17.12.510.G. and 17.12.510.I. These fees are used to cover the cost of issuing permits to new sources and for processing revisions to permits. Pima estimated the permitting related average hourly billing costs for permitting of title V facilities, including salary, fringe benefits, direct non-salary costs and indirect costs including cost estimates of various types of permit related activities. The estimated hourly cost is $53.60.

Because state law caps hourly fees at $53.00, Pima's hourly charges are capped at $53.00. See 17.12.510.M. Although this cap is 60 cents per hour less than the District's estimated hourly costs for permit processing, EPA finds this provision to be fully approvable. Given the inherent uncertainty in the cost estimates, EPA believes that the difference is insignificant and unlikely to cause a shortfall in revenues. Further, Pima is tracking its program costs and revenues and has committed to provide EPA with periodic updates that will demonstrate whether fee revenues are meeting the costs of the program. If EPA finds that the County is not collecting fees sufficient to fund the title V program, it will require a program revision.

In addition to imposing a cap on hourly fees, state law also limits the maximum chargeable fee for issuing and revising permits. State law and Pima regulations cap title V permit issuance fees at $30,000. See 17.12.510.G. Pima has estimated the cost of issuing a title V permit to a new source at $21,484. Fees for processing permit revisions are capped at $25,000 for significant revisions and $10,000 for minor permit revisions. See 17.12.510.I. Because the workload associated with these classes of permit revisions is likely to vary a great deal, Pima did not attempt to estimate the cost of these actions. The County believes that costs for permit revisions will be less than the maximum allowable fees. (See letter to Dave Howekamp, EPA, from David Esposito, Pima County, dated February 17, 1997.) EPA will periodically review the County program to ensure adequate fees are collected.

3. Amendments to the Fee Provisions in Pima County's Title V Program

If EPA finalizes its approval of the proposed amendments to Pima County's fee provisions, the following changes will be made to the County's title V program. Rules 17.12.320, 17.12.500, 17.12.520 , 17.12.580 (adopted September 28, 1993); Rule 17.12.610 (adopted November 14, 1989); and Rules 17.12.640 and 17.12.650 (adopted December 10, 1991) will be removed. Rules 17.12.320, 17.12.500, and 17.12.510 (adopted November 14, 1995) will be added.

IV. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed approval. Copies of Pima's submittal and other information relied upon for the proposed interim approval are contained in dockets (AZ–Pima–97–1–OPS, and AZ–Pima–97–2–OPS) maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by March 16, 1998.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

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 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, 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.

The EPA has determined that the approval 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. 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.

D. Small Business Regulatory Enforcement Fairness Act

Under section 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 section 804(2) of the APA as amended.

E. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 70

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

Authority: 42 U.S.C. sections 7401–7671q.

Dated: February 2, 1998.

Felicia Marcus,

Regional Administrator.

[FR Doc. 98–3581 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE55

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Thlaspi Californicum (Kneeland Prairie Penny-Cress) From Coastal Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Thlaspi californicum* (Kneeland Prairie penny-cress). *Thlaspi californicum* is known from Kneeland Prairie in Humboldt County, California, where it grows in coastal prairie on serpentine outcrops. The Service considers the occurrences of *T. californicum* reported from Mendocino County to be *T. montanum*, a widely distributed species. Habitat loss, potential road realignment, and proposed airport expansion activities imperil the continued existence of *T. californicum*. The restricted range of this species, limited to a single population, increases the risk of extinction from naturally occurring events such as fire. This proposed rule, if made final, would extend Federal protection under the Act to this plant species.

DATES: To ensure consideration in the development of a final decision-making document for this species, comments from all interested parties should be received by April 13, 1998. Public hearing requests must be received by March 30, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Sacramento, California 95821–6340. Comments and materials received, as well as the supporting documentation used in preparing the rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/979–2120; facsimile 916/979–2128).

SUPPLEMENTARY INFORMATION:

Background

Thlaspi californicum is found on serpentine soils at a coastal prairie in Humboldt County, California. Serpentine soils are derived from ultramafic rocks such as serpentinite, dunite, and peridotite, which are found in discontinuous outcrops in the Sierra Nevada and Coast Ranges of California from Santa Barbara County to Humboldt County. The chief constituent of the parent rock is a variant of iron-magnesium silicate. Most serpentine soils are formed in place over the parent rock, and are therefore shallow, rocky, and highly erodible. Serpentine soils, because of the parent material, tend to have high concentrations of magnesium, chromium, and nickel, and low concentrations of calcium, nitrogen, potassium, and phosphorus (Kruckeberg 1984). These characteristics make serpentine soil inhospitable for the growth of most plants, but some plants have adapted to serpentine substrates.

Sereno Watson (1892) described *Thlaspi californicum* based on material collected by Volney Rattan from Kneeland Prairie at 760 meters (m) (2,500 feet (ft)) elevation in Humboldt County, California. Payson (1926) maintained it as a full species in his monograph of the genus, whereas it was referred to as *T. alpestre* var. *californicum* in Jepson's (1925) manual, and *T. glaucum* ssp. *californicum* by Munz (1959). Holmgren (1971) assigned the name *Thlaspi montanum* var. *californicum* and gave its range as Kneeland Prairie (including a 1952 specimen from a ''serpentine rockpile toward Ashfield Butte''). She noted that the plant had last been collected in 1962. Rollins (1993a, 1993b) has elevated it to a full species: *Thlaspi californicum*.

Thlaspi californicum is a perennial herb in the mustard family (Brassicaceae) that grows from 9.5 to 12.5 centimeters (cm) (3 to 6 inches (in)) tall, with a basal rosette. The margins of the basal leaves range from entire to toothed. The white flowers have strongly ascending pedicels (flower stalks). The fruit is a sharply pointed silicle (a short fruit typically no more than 2 to 3 times longer than wide). *Thlaspi californicum* flowers from May to June. Characteristics that separate *T. californicum* from *T. montanum* include the orientation of the pedicel, shape and notching of the fruit, and length/width ratio of the fruit. *Thlaspi montanum* has pedicels perpendicular to the stem, not strongly ascending, and the silicles are either truncate or shallowly notched, but not acute at the apex as they are in *T. californicum* (Meyers 1991).

Rollins (1993a, 1993b) and Holmgren (1971) considered *Thlaspi californicum* to occur only at Kneeland Prairie. Wheeler and Smith (1991), in their ''Flora of Mendocino County,'' reported two additional occurrences of *T. californicum* located on Mendocino National Forest in Mendocino County. These sites have been examined by Dave Isle, Mendocino National Forest botanist; Dave Imper, Environmental Specialist with SHN Consulting Engineers and Geologists; and Service staff. In addition, all of the herbarium specimens for *T. californicum* and *T. montanum* at Humboldt State University, including those collected in Mendocino County, have been examined by Imper and Service staff. The only collections considered by Imper and the Service to be *T. californicum* are from Kneeland Prairie in Humboldt County (Imper 1997; Larry Host and Kirsten Tarp, U.S. Fish and Wildlife Service (USFWS), pers. comms., 1997). Plants from Blue Banks and near the Spruce Grove campground on the Mendocino National Forest have pedicels that are perpendicular to the stem and silicles that are truncate and notched, characteristic of *T. montanum*. Additionally, the habitat and elevation are different from Kneeland Prairie. Other herbarium specimens, housed at the Humboldt State University herbarium and collected from Blue Banks and from Spruce Grove campground, are identified as *T. montanum*. McCarten (1991) did not

find any *T. californicum* in his habitat management study of rare plants and communities associated with serpentine soils on the Mendocino National Forest. The Mendocino National Forest botanist and the botanical consultant for Humboldt County concurred with this conclusion (Imper 1997; Dave Isle, botanist, Mendocino National Forest, pers. comm., 1997; L. Host and K. Tarp, pers. comms., 1997).

The California Natural Diversity Database (CNDDB) includes one occurrence for *Thlaspi californicum* based on Constance & Rollins' collection #2877 from 1942 (''5 mi s of Hoopa Valley''), housed at the Humboldt State University herbarium. The specimen had been annotated as *T. californicum* in 1976 by T. Nelson, then the herbarium's curator. A duplicate of this specimen, housed at another herbarium, had been assigned to *T. montanum* var. *montanum* by Patricia Holmgren in her 1971 biosystematic study of North American *T. montanum* and its allies. The specimen has since been examined by Imper and Service staff, who concur that it is *T. montanum* (Meyers 1991, Imper 1997).

The only known population of *Thlaspi californicum* is scattered within an area of 0.25 hectare (ha) (0.6 acre (ac)), with a total of about 11,000 individuals at Kneeland Prairie in Humboldt County (Dave Imper, Environmental Specialist, SHN Consulting Engineers and Geologists, pers. comm., 1997). The Kneeland Prairie population is bisected into two colonies by the Kneeland Airport. Both colonies occur on private land immediately adjacent to the Kneeland Airport. At Kneeland Prairie, the habitat for *T. californicum* has been reduced by approximately 60 to 70 percent within the past 33 years (CNDDB 1990, Meyer 1991, Imper 1997). This population is currently threatened by the proposed expansion of the County airport and potential realignment of the adjacent road. Because of its extremely restricted range, the plant is also vulnerable to extinction from naturally occurring events such as fire (CNDDB 1997).

In order to assess the significance of the Kneeland prairie population to the species, Imper (1997) inspected potentially suitable habitat for *Thlaspi californicum* in other areas near Kneeland Prairie and to the south. He found no other occurrences. Additionally, *T. californicum* has been targeted for surveys by the Bureau of Land Management (BLM) and U.S. Forest Service staff. The Six Rivers National Forest has no documented occurrences (Lisa Hoover, botanist, Six Rivers National Forest, pers. comm., 1997). A search for the species has not revealed any *T. californicum* on the serpentine at Iaqua Buttes on BLM lands (Jennifer Wheeler, botanist, BLM, Arcata Resource Area, pers. comm., 1997).

Previous Federal Action

Federal government action on this species began on December 15, 1980 (45 FR 82480), when the Service published a revised Notice of Review of native plant taxa considered for listing under the Act. *Thlaspi californicum* (then known as *T. californicum* var. *montanum*) was included as a category 2 candidate. Category 2 candidates were formerly defined as taxa for which data on biological vulnerablilty and threats in the Service's possession indicated that listing was possibly appropriate, but was not sufficient to support proposed rules. The taxon remained a category 2 candidate in the revised plant notices of review published in the **Federal Register** on November 28, 1983 (48 FR 53640), and September 27, 1985 (50 FR 39526). The plant was listed as a category 1 candidate in the February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), revised notices of review. Category 1 candidates were defined as those taxa for which the Service had on file sufficient information on biological vulnerability and threats to support the preparation of listing proposals, but issuance of the proposed rule was precluded by other pending listing proposals of higher priority. On February 28, 1996, the Service published a notice of review in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 candidates. *Thlaspi californicum* was listed as a candidate in that notice of review. This species has been given a listing priority assignment number of 2, due to the high magnitude, imminent threats to its continued existence.

The processing of this proposed rule conforms with the Service's final listing priority guidance for fiscal year 1997, published in the **Federal Register** on December 5, 1996 (61 FR 64475). In a **Federal Register** notice published on October 23, 1997 (62 FR 55628), the guidance was extended beyond fiscal year 1997 until such time as the fiscal year 1998 appropriations bill for the Department of the Interior becomes law and new final guidance is published. The fiscal year 1997 guidance clarifies the order in which the Service will process rulemakings following two related events: (1) the lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Act on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. Based on biological considerations, this guidance establishes a ''multi-tiered approach that assigns relative priorities, on a descending basis, to actions to be carried out under section 4 of the Act'' (61 FR 64479). The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. Tier 3 includes the processing of new proposed listings for species facing high magnitude threats. This proposed rule for *Thlaspi californicum* falls under Tier 3. The guidance states that ''effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3'' (61 FR 64480). The Service has thus begun implementing a more balanced listing program, including processing more Tier 3 activities. The completion of this Tier 3 activity (a proposal for a species with high-magnitude, imminent threats) follows those guidelines.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Thlaspi californicum* S. Watson (Kneeland Prairie penny-cress) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

The habitat of *Thlaspi californicum* has been significantly reduced within the past 33 years. Just prior to 1964, an estimated 2.0 to 2.25 ha (5 to 6 ac) of habitat existed at Kneeland Prairie (Meyers 1991). Approximately 60 to 70 percent of the habitat at Kneeland Prairie has been lost since 1964, due to construction of the Kneeland Airport, realignment of the county road that runs through Kneeland Prairie, and construction of the California Department of Forestry (CDFFP) helitack base (Meyers 1991; Imper 1990; Imper, pers. comm., 1997). Additional habitat and plants are currently threatened by the proposed expansion

of the Kneeland Prairie Airport and potential road realignment.

The Kneeland Prairie Airport serves principally as the backup airport for Rohnerville, Murray, Eureka Municipal, and Arcata-Eureka airports. Small single-engine and occasionally twin-engine planes use Kneeland Airport. This airfield is especially important when airports at lower elevations are fogged in, a frequent occurrence in the region (Hodges & Shutt 1993). Kneeland Prairie is the only airport in the Humboldt Bay area that can be used when the bay is fogged in (Don Tuttle, Resource Specialist, Humboldt County Public Works, pers. comm., 1997). The airport is particularly important for commercial express mail and air freight carriers, as well as other couriers (Ray Beeninga, Airports Manager, Humboldt County, pers. comm., 1997).

Humboldt County contracted a study to evaluate its airports and prepare appropriate planning documents (Hodges & Shutt 1993). The study provided an assessment of Kneeland Airport's role and associated airfield requirements. The report also discussed land use compatibility issues and descriptions of capital projects, and provided documentation required to upgrade Kneeland Airport from temporary to permanent inclusion in the National Plan for Integrated Airport Systems. That designation allows the county to receive Federal funding for airport modifications through the Federal Aviation Administration (FAA). Recommendations in the report included development of a complete geotechnical study of specific engineering designs to stabilize the airport, and construction of a new parking area meeting FAA setback standards. The report discussed design constraints for placement of the new parking area. The location of the CDFFP helitack base limits the ability of the airport to expand the existing parking area to the northwest (Hodges & Shutt 1993). The recommended location for the new parking area is on the eastern side of the airport (Hodges & Shutt 1993), adjacent to the eastern colony of *Thlaspi californicum*. Construction of the parking facility at Kneeland Airport could adversely affect the habitat and individuals of the eastern colony due to the proximity of the plants to the potential site.

Humboldt County is also contracting an initial study to evaluate the geotechnical feasibility and cost of modifying Kneeland Prairie Airport. The study, currently in progress (D. Tuttle and D. Imper, pers. comms., 1997), is evaluating ways to solve problems involving subsidence of the runway, slope stabilization, and the safety issue that the runway is too short (Dave Dietz, Project Manager, Shutt-Moen Associates, pers. comm., 1997). Possible options include leaving the airport configuration as is (i.e., repairing current subsidence, but not extending the runway), finding a different site for a new airport, or modifying the existing airport (D. Dietz, pers. comm., 1997). Financial constraints could influence the choice among the alternatives. In additional, exploratory soil boring is needed to determine how to stabilize the airport and to determine the cost of extending the runway. *Thlaspi californicum* occurs on the slopes immediately adjacent to the airfield. Exploratory boring may affect individuals located immediately adjacent to airport lands. Modification of the existing airport is anticipated to occur in the year 2000 (R. Beeninga, pers. comm., 1997).

The realignment of the county road adjacent to the airport could affect the western occurrence of *Thlaspi californicum* at Kneeland Prairie (D. Imper, pers. comm., 1997). The road currently runs along the southwest edge of the runway and serves areas beyond the airport. The aviation manager would not be authorized to modify the road except as necessary for slope stabilization or as the result of possible runway extension at the south end of the airport. The extension of the runway to the south is not expected to directly impact *T. californicum*. However, if the runway is extended 30 to 65 m (90 to 200 ft) (R. Beeninga, pers. comm., 1997), the runway will run through the current road. The road would then either need to go under the runway via a tunnel, or be realigned. Road realignment could result in impacts to the habitat and individual plants. The western colony of *Thlaspi californicum* occurs just downslope of the current road. For safety reasons, it is likely that Humboldt County will undertake straightening and/or widening the road, either independent of or concurrent with runway expansion (L. Host, *in litt.*, 1997). The road adjacent to the airport is narrow; a blind, 90-degree curve in the road around the end of the runway limits safe speeds to only 10 to 15 miles per hour. These conditions could warrant a county decision to realign the road in order to achieve a safer curve radius at the end of the runway. Unless the approach to that portion of the road is moved outward beyond the plants (which would require extra length and expense), the realignment would cross the remaining serpentine habitat and eliminate about half of the remaining plants in the western colony. The Service anticipates that such roadwork would occur during airport construction in order to avoid the expense of bringing necessary machinery to the site twice.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a threat for this plant.

C. Disease or Predation

There is no known threat to *Thlaspi californicum* from disease. Cattle grazing occurs throughout the prairie and the area surrounding the airport (Imper 1997). Cattle trails run through *T. californicum* habitat (Meyers 1991), but there does not appear to be any threat to the species from current levels of grazing.

D. The Inadequacy of Existing Regulatory Mechanisms

The California Environmental Quality Act (CEQA) (chapter 2, section 21050 *et seq.* of the California Public Resources Code) requires full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is therefore dependent upon the discretion of the agency involved.

When the CDFFP constructed the Kneeland Helitack Base in 1980, a botanical assessment was required by the Humboldt County Planning Department for issuance of a conditional use permit. However, CDFFP did not include any analysis of potential impacts to *Thlaspi californicum*, although records of its California Native

Plant Society 1B status and CNDDB documentation of the species' presence were available at that time (Imper 1990, Meyers 1991).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Thlaspi californicum has never been found anywhere other than at Kneeland Prairie, where the single population occupies 0.25 ha (0.6 ac), bisected by the Kneeland Airport. This plant occupies serpentine prairie habitat that is quite restricted in extent. The combination of a single population and restricted habitat makes *T. californicum* susceptible to destruction of all or a significant portion of its range from naturally occurring events such as fire, drought, or severe erosion (Shaffer 1981, Primack 1993). Chance events causing population fluctuations or even population extirpations are not usually a concern until the number of individuals or geographic distribution becomes as limited as with *T. californicum* (Primack 1993). The single known locality of the species makes the population at Kneeland Prairie particularly susceptible to extinction due to fire or an erosional event causing slope failure. Even one such event has the potential to seriously impact the sole population of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Airport expansion activities, potential road realignment, inadequate regulatory mechanisms, and naturally occurring events such as fire imperil the continued existence of this plant. The one known population of *Thlaspi californicum* includes approximately 11,000 individual plants scattered within a 0.25 ha (0.6 ac) area. The species is in danger of extinction throughout all of its known range. Based on this evaluation, the preferred action is to list *T. californicum* as endangered. Other alternatives to this action were considered but not preferred because they would not provide adequate protection and would not be consistent with the Act. Listing *T. californicum* as endangered would provide additional protection and is consistent with the Act's definition of endangered. Critical habitat is not being proposed for *T. californicum* for reasons discussed in the ''Critical Habitat'' section of this proposal.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Thlaspi californicum*. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service determines that designation of critical habitat for *Thlaspi californicum* is not prudent due to lack of benefit to the species. Critical habitat designation provides protection only on Federal lands or on private lands when there is Federal involvement through authorization or funding of, or participation in, a project or activity. Although this plant occurs only on private land, it may be affected by projects with Federal connections, including potential Federal funding of the county road realignment and airport expansion by the Federal Highway Administration and the FAA respectively. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of a federally listed species, or to destroy or adversely modify designated critical habitat.

Thlaspi californicum has an extremely narrow distribution in a serpentine prairie, totalling about 0.25 ha (0.6 ac) in two parcels separated by the runway of Kneeland Airport, whose construction appears to have destroyed most of the plant's habitat. At the present time, no other site is known to be occupied by or suitable for this plant. The private landowners at Kneeland are aware of the plant's presence and extremely limited habitat, as are the airport operators and others involved in management of the area. Therefore, designation of critical habitat would provide no benefit with respect to notification. In addition, given the species' narrow distribution and precarious status, virtually any conceivable adverse effect would very likely jeopardize its continued existence. Designation of critical habitat for *T. californicum* would therefore provide no benefit to the species apart from the protection afforded by listing the plant as endangered.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All of the occurrences of *Thlaspi californicum* are on privately owned

land. However, impacts of modifying the adjacent airport have the potential to adversely affect *T. californicum,* due to the proximity of the plants to the proposed parking apron. Funds from the FAA have been used to partially finance a planning document for the Kneeland Airport and are proposed to be used for airport modifications. Private sector funding is not anticipated to be available for Kneeland Airport (Hodges & Shutt 1993). Realignment of a county road adjacent to the airport may be required if the runway is extended. This work could be partially funded by Federal Highway Administration grants, thereby providing another avenue for section 7 consultation.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export an endangered plant, transport such a plant in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale an endangered plant in interstate or foreign commerce, or remove and reduce an endangered plant to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within a species' range. This species is not located on areas under Federal jurisdiction. Collection, damage or destruction of this species on Federal lands is prohibited (although in appropriate cases a Federal endangered species permit may be issued to allow collection for scientific or recovery purposes). Such activities on areas not under Federal jurisdiction would constitute a violation of section 9 if conducted in knowing violation of California State law or regulations, or in violation of State criminal trespass law. Moderate livestock grazing and normal use of the existing airfield and road are among the activities that would be unlikely to violate section 9. Questions regarding whether specific activities would constitute a violation of section 9, should this species be listed, should be directed to the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 and 17.63 provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued for *Thlaspi californicum* because it is not common in cultivation or in the wild. Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (phone 503/231–2063; facsimile 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The Service will follow its peer review policy (59 FR 34270; July 1, 1994) in the processing of this rule. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Thlaspi californicum;*

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

A final determination of whether to list this species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final decision-making document that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author. The primary author of this proposed rule is Kirsten Tarp, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Flowering Plants							
*	*	*	*	*	*		*
Thlaspi californicum	Kneeland Prairie penny-cress.	U.S.A. (CA)	Brassicaceae	E		NA	NA
*	*	*	*	*	*		*

Dated: December 30, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–3561 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 29
Thursday, February 12, 1998

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

Food Safety and Inspection Service

[Docket No. 95–054N]

International Standard-Setting Activities, Codex Alimentarius Commission; Duties of United States Delegates and Delegation Members Including Non-Government Members

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; Request for comments.

SUMMARY: This notice describes the activities of the Codex Alimentarius Commission (Codex); describes the duties of the United States delegate and alternate delegate to Codex committees; provides the criteria and procedures to be used in selecting non-government members to various United States delegations to Codex committees; describes the appropriate role of non-government members on Codex committees; identifies the manner in which the public will be informed of and may participate in Codex activities; and requests comments on these matters.

DATES: Comments should be submitted by May 13, 1998.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Clerk, Docket #095–054N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., United States Manager for Codex Alimentarius, Office of the Under Secretary for Food Safety, United States Department of Agriculture, Room 4861S, Washington, DC 20250–3700; (202) 205–7760.

SUPPLEMENTARY INFORMATION:

Background

The Codex is the joint food standards program of the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO). This 35-year-old program was established to help protect the health of consumers and to facilitate trade through the establishment of international food standards, codes of practice and other guidelines. Through adoption of food standards, codes of practice, and other guidelines developed by its committees and by promoting their adoption and implementation by governments, Codex seeks to facilitate world trade in foods and promote consumer protection.

The Codex comprises representatives of more than 150 member nations. It meets every two years. It adopts draft and final standards, guidelines and codes of practice, and assigns new work to its subsidiary bodies. These subsidiary bodies perform the work of developing the standards, guidelines and recommendations. The subsidiary bodies include Regional Coordinating Committees, Commodity Committees, and General Subject Matter Committees. An Executive Committee of the Codex is responsible for making recommendations about the general direction of the Commission's work. The Executive Committee, which meets every year, acts as the executive organ of the Commission and may make decisions for the Codex subject to their approval at the next biennial Codex session. Regional coordinating committees ensure that the work is responsive to regional interests and to developing countries. The Codex has set up commodity committees and general subject matter committees. These are the groups that draft standards and make recommendations to the Codex. The U.S. participates in all active General Subject Matter and Commodity Committees and in the Regional Coordinating Committee for North America and the South West Pacific.

In the United States, the United States Department of Agriculture (USDA); the Food and Drug Administration (FDA), Department of Health and Human Services (HHS); the Environmental Protection Agency (EPA); and the Department of Commerce (DOC) manage and carry out U.S. Codex activities. Executive direction to the effort comes from the U.S. Manager for Codex, supported by the U.S. Codex Office. The U.S. Delegates to the subsidiary bodies participate in the development of standards. These delegates and the alternate delegates are government officials in USDA, FDA, EPA and DOC. The delegates develop U.S. positions on issues to be considered. All interested parties are invited to provide information and comments on the issues. As the delegates prepare for the meetings of their committees, they form delegations comprised of individuals having an interest in the issues and whose expertise they think would be helpful or necessary at the meetings. These individuals participate as members of the official U.S. Delegations, at their own expense.

I. Appointment and Responsibilities of the U.S. Delegate to Codex

A. The United States Codex Steering Committee selects, and the United States Manager for Codex Alimentarius appoints, a United States delegate as the head of the United States delegation to each Codex committee and an alternate delegate to act in the absence of the United States delegate. The U.S. Delegate and the alternate delegate will be full time federal government employees.

B. The United States delegate, or in his absence, the alternate delegate, is responsible for representing the United States Government at all Codex committee sessions and for presenting the United States position on each agenda item at Codex committee sessions. It is the United States delegate's responsibility to ascertain the United States Government's current position on each Codex committee agenda item and to draft the United States Government's response to each agenda item. Positions presented by the United States delegate should be based on sound science and take into account United States statutes, regulations, and policy. The United States delegate may determine that a proposed Codex standard that is not consistent with existing United States statutes, regulations, or policies is worthy of consideration and may, in that case, refer the proposed Codex standard to the United States agency responsible for

accepting or not accepting a particular Codex standard.

C. The United States delegate, in consultation with the United States Manager for Codex Alimentarius, is responsible for selecting non-governmental members to serve on the United States delegation to the Codex committee.

II. Formation of Delegations

A. The United States delegate, in consultation with the United States Manager for Codex Alimentarius, selects a delegation.

B. The number of the United States delegation members, including government and non-government members, is limited to a maximum of twenty-five persons for each Codex committee.

C. The United States delegate will strive to form a delegation that: (1) Has expertise relevant to the items on the agenda of, or likely to be discussed at, the particular Codex committee session; (2) can assist the United States delegate with items on the agenda of, or likely to be discussed at the particular Codex committee session; (3) is representative of the individuals, groups, and organizations that have an interest in the items on the agenda of, or likely to be discussed at the particular Codex committee session; and (4) is representative of the individuals, groups, and organizations that could be affected by standards to be considered at the Codex session.

D. With regard to selection of non-government members to delegations, the United States delegate will consider the following: (1) The necessity of obtaining the informed views of non-government individuals during the Codex committee session; (2) whether consultations or opportunities to provide written comments prior to the Codex committee session would be an adequate alternative to including non-government members on the United States delegation; and (3) the number of non-government members that would be required on the United States delegation to provide balanced representation of the individuals, groups, and organizations that have an interest in the items on the agenda of, or likely to be discussed at, a particular Codex committee session and could be affected by standards to be considered at the Codex session.

III. Application and Selection Procedures for Non-Government Members

A. Individuals and representatives from groups and organizations interested in becoming members of the United States delegation should contact the United States delegate or the Office of the United States Manager for Codex Alimentarius.

B. The United States delegate: (1) Will consider all requests for membership on the United States delegation; (2) may seek volunteers for membership on the United States delegation; and (3) may identify and solicit for membership on the United States delegation non-government individuals and representatives from groups or organizations that will result in a delegation that meets the criteria in paragraph II.C. of this notice.

C. The United States delegate may select non-government members from labor groups, the academic community, trade associations, specific business firms, public interest groups, and from other sources, including the public at large. The United States delegate will not be required to select more than one representative from the same non-governmental organization to become a member of the United States delegation merely because the non-governmental organization represents more than one entity or because there are differing views among individuals or entities within the non-governmental organization.

D. The United States delegate may request that any person interested in becoming a member of the United States delegation submit for consideration a written summary of his or her qualifications. This summary should include information pertinent to the work carried out under the general terms of reference of the committee, as well as to particular items on the agenda of, or likely to be discussed at, upcoming Codex committee sessions.

E. The United States delegate may limit the period of participation on, and may exclude from, the United States delegation any non-government member whose conduct is: (1) Contrary to the provisions of this notice; (2) contrary to limitations or prohibitions imposed by the United States delegate pursuant to this notice or other authority; or (3) prejudicial to the interest of the United States Government, including the effective functioning of the United States delegation. No non-government member, however, may be excluded from the United States delegation merely because of views provided in good faith to other members of the United States delegation, nor may a non-government member be excluded from the United States delegation for declining to provide views on a matter based upon the non-government member's belief that his or her views would be inappropriate or prejudicial to the United States Government's position.

IV. Responsibilities on Non-Government Members on U.S. Codex Committee Delegations

A. Non-government members should attend all Codex committee sessions and be available to assist the United States delegate, upon request. In addition, all members of the United States delegation are expected to attend delegation meetings convened by the United States delegate.

B. A member of a United States delegation may not serve concurrently during a Codex committee session as a member of any other country's delegation or on the delegation of an accredited observer to the Codex session.

C. Non-government members are not permitted to speak with foreign government officials on behalf of the United States Government at any Codex committee session. However, the United States delegate may authorize a non-government member to explain a technical or factual point, if, in the judgement of the United States delegate: (1) the explanation by the non-government member will advance United States Government objectives at the Codex committee session; or (2) the non-government member is best able to explain the technical or factual point under discussion.

D. To the extent feasible, the United States delegate will consult with and seek recommendations from non-government members, but will not be obliged to present at any Codex committee session any recommendation made by any non-government member.

E. Non-government members shall not at any time negotiate or purport to negotiate for the United States Government. Non-government members shall not take any individual action on behalf of the United States Government without express permission from the United States delegate. Non-government members shall not advocate positions outside of the United States delegation during a Codex committee session that would tend to undermine the position of the United States Government, as determined by the United States delegate. However, membership on the United States delegation by a non-government member does not prohibit any other individual, including an individual from the same organization as the non-government member, from expressing views that are not in accordance with the United States Government's position. Further, no non-government member of the United States delegation shall be prohibited

from expressing views on the outcome of a negotiation after conclusion of the negotiation or Codex committee session.

F. Non-government members are not immune from any laws or regulation of the United States or of the host country as a result of participation on a United States delegation, and no government official may represent that participation confers any such immunity.

V. Public Notification of and Participation in U.S. Codex

A. The Office of the United States Manager for Codex Alimentarius publishes annually in the **Federal Register** a notice containing (1) Descriptions of the standards under consideration or planned for consideration by Codex committees and whether the United States is participating in the consideration of those standards; (2) the agenda for United States participation in Codex committee; (3) the agency responsible for representing the United States with regard to each standard under consideration or planned for consideration by Codex committees; and (4) a list of the Codex committees and the names and agency affiliations of the United States delegate and alternate delegate for each committee. This same information is available through the U.S. Codex website: http://www.usda.gov/agency/fsis/codex/index.htm. Also, the United States Manager for Codex Alimentarius maintains a list of non-government individuals, groups, and organizations that have expressed an interest in the activities of the Codex.

B. The United States delegate and alternate delegate will facilitate, to the greatest extent possible, public participation in the United States Government activities relating to the Codex. Toward this end, the United States delegate will maintain a list of individuals, groups, and organizations that have expressed an interest in activities of the Codex committees.

C. The United States delegate will notify members of the public who have indicated an interest in a particular Codex committee's activities of the status of each agenda item and the United States Government's position or preliminary position on the agenda item, if such a position has been determined. The United States delegate may request members of the public who have indicated an interest in a particular Codex committee's activities to submit written comments. Public meetings may also be held to receive comments.

D. As required by section 491 of the Trade Agreement Act of 1979, as amended, (19 U.S.C. 2578), the agency responsible for accepting or rejecting a particular Codex sanitary or phytosanitary standard shall provide opportunity for public comment on the Codex standards under consideration or planned for consideration. This opportunity for public comment will be provided as early as possible following the identification of a sanitary or phytosanitary standard for consideration by a Codex committee. The comments received will be taken into account in the United States delegate's participation in the considerations of the Codex committee.

E. The United States delegate may solicit comments as deemed appropriate and all comments received will be considered. Public comments relevant to Codex committee activities should be supported by as much data or research as possible and such data or research should be properly referenced to enhance the persuasive impact of the comments. The United States delegate will consider all comments received but will not be bound to agree with any comment. The views expressed in these comments may or may not be presented by the United States delegate to a Codex committee.

Done at Washington, DC, on February 6, 1998.

F. Edward Scarbrough,

United States Manager for Codex Alimentarius.

[FR Doc. 98–3507 Filed 2–11–98; 8:45 am]

BILLING CODE 3410–DM–P

ARCTIC RESEARCH COMMISSION

February 4, 1998.

Notice of Meeting

Notice is hereby given that the U.S. Arctic Research Commission will hold its 50th Meeting in Washington, DC on February 23 and 24, 1998.

The Meeting will be held in the Board Room of the U.S. National Museum of Natural History (Smithsonian Institution), first floor, Constitution Avenue at Tenth Street, NW, and will begin at 9:00 a.m. on both days. Attendees must use the Constitution Avenue Entrance.

Topics for the meeting include agency reports and a special focus on the Environmental Impact Statement (EIS) Process. BLM and the U.S. Army Corps of Engineers will make presentations on their EIS work in the U.S. Arctic. A report on the recent cruise of the USS Hawkbill nuclear submarine research cruise in the Arctic Ocean will also be presented.

Any person planning to attend the Tuesday meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 98–3596 Filed 2–11–98; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Census 2000 Dress Rehearsal Integrated Coverage Measurement (ICM) Person Interview and Outmover Tracing Activities.

Form number(s): CAPI Person Interview, CAPI Person QA Interview, CATI Outmover Tracing Interview, and DX–1340.

Agency approval number: None.

Type of request: New collection.

Burden: 11,175 hours.

Number of respondents: 28,400.

Avg hours per response: About 19 minutes.

Needs and uses: The Bureau of the Census developed the Integrated Coverage Measurement (ICM) approach for measuring coverage of housing units and populations during the decennial census. In the Census 2000 Dress Rehearsal, we are interested in conducting a rehearsal of our ICM approach to measuring the coverage of the census for housing units and people.

The first phase of ICM consists of developing an independent listing of all addresses within the Census 2000 Dress Rehearsal sites. The independent listing will be matched to the census list of addresses; the unmatched cases will be sent to the field for reconciliation during the Housing Unit Follow-up operation. The resultant address listing will be used in the ICM Person Interview phase. The materials for the independent listing have been approved by the Office of Management and Budget (OMB). The materials for the Housing Unit Follow-up operation are currently awaiting OMB approval.

During the ICM Person Interview, the Bureau of the Census will interview target ICM sample cases. Intensive probing techniques will be used to

reconstruct a roster of the residents of the housing unit on census day. When combined with our efforts to match responses to the results of the initial count, the interview data will identify persons missed or incorrectly included in the census as well as persons correctly enumerated.

For census day residents that have moved (outmovers), we will attempt to locate and interview the census day residents at their new address. We will use proxy information gathered from current residents in cases where we cannot locate outmovers.

For quality assurance, at maximum, a 20 percent random sample of respondents in the ICM sample will be reinterviewed.

After the person interview, person matching for Dual System Estimation (DSE) will be conducted. Unresolved cases will be reconciled in the field during the ICM Person Follow-up interview. The materials to be used in the Person Follow-up interview will be submitted later this year.

Affected public: Individuals or households.

Frequency: One-time.

Respondent's obligation: Mandatory.

Legal authority: Title 13 USC, Sections 141, 193, and 221.

OMB desk officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–3616 Filed 2–11–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–429–601]

Solid Urea From the Former German Democratic Republic: Initiation (Consideration of Revocation of Order) and Preliminary Results (Intent To Revoke Order) of Changed Circumstances Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty review, and intent to revoke finding.

SUMMARY: In response to a letter filed on January 26, 1998, by the Ad Hoc Committee of Domestic Nitrogen Producers (petitioners) indicating that they have no further interest in the importation or sale of solid urea from the former German Democratic Republic (G.D.R.), the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty review and issuing a preliminary intent to revoke the antidumping duty finding on solid urea from the former G.D.R. Based on the fact that the petitioners have expressed no further interest in the importation or sale of solid urea produced in the former G.D.R., we intend to revoke this finding. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Donna Kinsella at (202) 482–4093 or Steven D. Presing at (202) 482–0194, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR 351 (62 FR 27296).

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1998, petitioners informed the Department in writing that they do not object to a changed circumstances review and have no further interest in the importation or sale of solid urea produced in the former G.D.R.

Scope of Review

Imports covered by this review are those of solid urea. At the time of the publication of the antidumping duty order, such merchandise was classifiable under item 480.30 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classified under the Harmonized Tariff Schedule of the United States (HTS) item number 3102.10.00. These TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The Department's written description of the scope remains dispositive for purposes of the order.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review

Pursuant to section 751(d) of the Act, the Department may revoke an antidumping duty order based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review.

The Department's regulations at 19 CFR 351.222(g) permit the Department to conduct a changed circumstances review under 19 CFR 351.216 based upon an affirmative statement of no interest from producers accounting for substantially all of the production of the domestic like product to which the order pertains. In addition, in the event that the Department concludes that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results. Therefore, in accordance with section 751(b) of the Act and 19 CFR 351.216, 351.221, and 351.222 based on an affirmative statement of no interest in this proceeding by petitioners, we are initiating this changed circumstances review. Based on the fact that no other interested parties have objected to the position taken by petitioners that they have no further interest in the order regarding solid urea from the former G.D.R., we have determined that expedited action is warranted, and we are combining these notices of initiation and preliminary results. We have preliminarily determined that there are changed circumstances sufficient to warrant revocation of the finding on

solid urea from the former G.D.R. Therefore, we are hereby notifying the public of our intent to revoke the antidumping duty order as it relates to imports of solid urea from the former G.D.R.

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments.

If final revocation occurs, we intend to instruct the U.S. Customs Service (Customs) to end the suspension of liquidation of all unliquidated entries of solid urea from the former G.D.R. not subject to final results of review pursuant to section 751 of the Act and refund any estimated antidumping duties collected for such entries of solid urea in accordance with 19 CFR 351.222, with interest in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

This initiation of review and notice are in accordance with section 751(b) of the Act, (19 U.S.C. 1675(b)), and 19 CFR 351.216, 351.221, and 351.222.

Dated: January 26, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3485 Filed 2–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–429–601]

Solid Urea From the Former German Democratic Republic; Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances review.

SUMMARY: On May 1, 1995, the Department of Commerce published the preliminary results of its changed circumstances review to examine the effect, if any, that the reunification of Germany had on the antidumping duty order covering solid urea from the five German states (Brandenburg, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt, and Thuringia (plus any other territory; hereinafter the ''Five States'') that formerly constituted the German Democratic Republic (GDR) (60 FR 21067). We have now completed this review and have not changed our determination from the preliminary results.

EFFECTIVE DATE: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Steven D. Presing and Nithya Nagarajan at (202) 482–3793, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On May 1, 1995, the Department of Commerce published the preliminary results of this review.

On November 17, 1997, the Department of Commerce published the final results of an administrative review of the order on solid urea from the Five States pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act). The review covered one manufacturer/exporter, SKW Stickstoffwerke Piesteritz GmbH (SKWP), and the period July 1, 1995 through June 30, 1996. As a result of that review, the Department instructed Customs to establish a new cash deposit rate for SKWP of 0.00 percent. Also as a result of that review, the Department instructed Customs to terminate suspension of liquidation for shipments of solid urea produced by firms located outside the Five States.

We have now completed the instant changed circumstances review and have not changed our determination from the preliminary results.

Scope of the Review

Importers covered by this review are those of solid urea. At the time of the publication of the antidumping duty order, such merchandise was classifiable under item number 480.30 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classified under the *Harmonized Tariff Schedule of the United States* (HTS) item number 3102.10.00. These TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The Department's written description remains dispositive.

Analysis of Comments Received

We received comments from the German Government, the Ad Hoc Committee of Domestic Nitrogen Producers (the ''Petitioner''), and SKW (on behalf of SKW Trostberg AG, SKWP, and SKW Chemicals, Inc.). We received rebuttal comments from the Petitioner, SKW, and Hydro Agri Brunsbuttel GmbH (''Hydro Agri''). We conducted a hearing attended by all parties on June 14, 1995.

Comment 1: The German Government believes that the Department should immediately revoke the antidumping duty order on urea, arguing that the Department's preliminary determination ignores the *de jure* and *de facto* integration of the Five States into the unified FRG and the integration of companies located in the Five States into the unified FRG's market economy. The German Government states that it is unacceptable that privatized German companies are still being judged by the behavior of their predecessors.

SKW agrees with the German Government and argues that the ''fundamental and irreversible'' changes which have taken place as a result of reunification constitute changed circumstances which justify revocation of the order pursuant to the Department's regulations and section 751(c) of Act (19 U.S.C. 1675(c)(1988)).

Petitioner objects to revocation of the order on this basis contending that 1) that there is no evidence on the record of this proceeding which establishes when, if ever, the Five States ceased to operate as a non-market economy within the meaning of section 771(18) of the Act (19 U.S.C. § 1677(18)(1988)); 2) a change in economic status does not provide a basis for revoking the order; 3) revocation of the order based upon the change in political borders would deprive if of the relief from unfairly traded imports that it sought and obtained, a principle, petitioner asserts, upheld by the Court of International Trade in *Techsnabexport, Ltd.* v. *United States,* 802 F. Supp. 469, 472 (CIT 1992) and 4) this changed circumstances review was initiated only to examine the applicability of the order to post-unification shipments of the subject merchandise from producers located outside the Five States—not whether the order should be revoked.

Department's Position: As in the **Federal Register** on May 1, 1995, the Department determined that ''as of October 3, 1990, producers located in

the five German states that formerly constituted the GDR have been operating in a market-oriented economy.'' *See Initiation of Changed Circumstances Antidumping Duty Administrative Review*, 83 Fed. Reg. 21067, 21068 (1995), *citing Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Germany*, 58 FR 37315, 37324 (1993). However, it is settled Department practice that a change in economic structure does not, by itself, justify revocation of an antidumping order. *See, e.g., Antidumping Duty Order and Initiation of Changed Circumstances Antidumping Duty Administrative Review; Certain Cut-to-Length Carbon Steel Plate From Poland*, 58 Fed. Reg. 44166, 44166 (Aug. 19, 1993). As the court in the *Techsnabexport* case held, such matters are properly the subject of an administrative review under section 751 of the Act. 802F. Supp. at 472. This position renders moot Petitioner's argument that there is no evidence on the record of this proceeding which demonstrates the conversion from non-market to market economy.

Second, U.S. antidumping law does not require revocation of an order where the country covered by the order undergoes a change in geo-political boundaries. The focus of the law is on merchandise. *See Postponement of Preliminary Antidumping Duty Determination: Uranium from the Former Union of Soviet Socialist Republics (USSR)*, 57 Fed. Reg. 11064 (1992) (incorporating by reference, memorandum from F. Sailer to A. Dunn dated March 24, 1992). *See also Jia Farm Manufacturing Co., Ltd.* v. *United States*, 817 F. Supp. 969, 973 (CIT 1993). The governing principle in cases involving changes in the political borders of respondent countries is that such changes do not affect the geographic scope of an antidumping measure. This principle comports with the holding in *Techsnabexport*, where the Department determined that the breakup of the Soviet Union did not justify the termination of the then-pending investigation of uranium. In that case, the Department determined that the correct approach in situations where countries under an antidumping duty order or investigation undergo changes in geo-political boundaries is to preserve, notwithstanding the change, the original geographic scope of the order or investigation.

Comment 2: SKW argues that the order must be revoked pursuant to section 353.25(d)(4)9iii) of the Department's regulations because the Petitioner did not file a formal objection to revocation of the order after five years had passed without a request for an administrative review, citing *Kemira Fibres Oy* v. *United States*, 861 F. Supp. 144 (CIT 1994)

Petitioner disagrees, contending that the *Kemira Fibers* case, which involved an extremely inactive domestic industry, is at the very least distinguishable from this case because in this case petitioners have filed numerous submissions with the Department over the relevant five year period expressing either support for the order or opposition to its revocation. Petitioner also maintains that *Kemira Fibers* was wrongly decided arguing that an essential prerequisite to revocation under section 353.25(d)(4) is notice and comment. Petitioner asserts that no such notification was ever provided in this case and that as a result the Department lacks the authority to revoke. Petitioner concludes by noting that the Department has appealed the holding in *Kemira Fibers*, and it is the Department's usual practice not to follow adverse decisions that may be reversed on appeal.

Department's Position: The Court of Appeals for the Federal Circuit has overturned the decision in *Kemira Fibers. Kemira Fibres Oy* v. *United States*, 61 F.3d 866, 875 (Fed. Cir. 1995) (''Revocation must be predicated on a lack of domestic industry interest and such interest must be ascertained through notification of an intent to revoke.'') Therefore, the fact that the Department never indicated an intent to revoke pursuant to section 353.25(d)(4) of its regulations, precludes revocation on the grounds advanced by SKW.

Comment 3: SKW argues that under the Act and its legislative history the Department is without authority to maintain an order on any geo-political entity other than a country. SKW argues that the maintenance of a province- or region-specific order would be an unjustifiable departure from the Department's practice. It further argues that additional support for its position is found in Article VI of the 1947 GATT which defines dumping as the introduction of products from ''one country'' into the commerce of ''another country'' at less than their normal value. Finally, SKW argues that the *Techsnabexport* case does not support the Department's preliminary determination to maintain the antidumping duty order on imports from the Five States because *Techsnabexport* involved the dissolution of a country (the Soviet Union) and whether a pending antidumping investigation could proceed against the twelve countries that succeeded it. Here, SKW submits, the question is whether changed circumstances warrant the revocation of an antidumping order covering a non-market country that has ceased to exist due to its complete unification with and assimilation into a market economy country. Furthermore, SKW argues, *Techsnabexport* did not embrace province- or region-specific orders but rather expressly stated that antidumping orders must address merchandise from particular countries.

Citing section 771(3) of the Act, Petitioner argues that neither the 1947 GATT nor U.S. law preclude the maintenance of an antidumping duty order on less than a country-wide basis. Petitioner also cites *Certain Softwood Lumber from Canada* as an example of at least one proceeding under Title VII which did not apply to merchandise on a country-wide basis. 57 FR 22570, 22623 (1992). Petitioner further contends that a province- or region-specific order is supported by the holding and rationale of the *Techsnabexport* case. 802 F. Supp. 469. The principal issue in both cases, petitioner argues, is what effect, if any, political changes in a geographic region subject to an antidumping proceeding have upon that proceeding. The holding of the court in the *Techsnabexport* case is that antidumping proceedings need not be extinguished as a result of shifting geo-political borders or changes in governments. Petitioner also argues that SKW is mistaken when it claims that the *Techsnabexport* decision supports the proposition that an antidumping order must always apply to merchandise from a particular country. According to Petitioner, the definition of ''country'' under the statute was never at issue in the *Techsnabexport* case.

Hydro Agri agrees that the Department has the legal authority to maintain the subject order on the Five States.

Department's Position: The issue in this case is whether the Department, once having issued a country-wide order, must revoke that order if the country covered by the order undergoes a change in geo-political boundaries or whether the Department may maintain the order on the same merchandise from the same geographic region as before the change occurred.

As state above, in response to Comment No. 1, nothing in U.S. antidumping law requires revocation of an order where the country covered by the order undergoes a change in geo-political boundaries. Rather, the correct approach in such situations is to preserve, notwithstanding the change in

government and political borders, the geographic region (and by extension the producers) subject to the order. We believe this position in consistent with U.S. antidumping law and our international obligations and note again that this principle has been upheld by the Courts in *Techsnabexport,* 802 F. Supp. at 472.

Comment 4: Petitioner argues that the order should be applied to urea produced throughout Germany, contending that extension of the order is consistent with the 1947 GATT, which does not require an injury determination to be based upon an examination of *all* exports from an exporting country, and is consistent with U.S. law. Petitioner notes that the Department normally analyzes only 60 percent of all sales in a LTFV investigation. Petitioner further contends that in *Pure and Alloy Magnesium from Canada,* the Department made an affirmative LTFV determination with respect to exports from the province of Quebec, but applied the order to all of Canada. 57 FR 30939 (1992). Lastly, Petitioner claims that extending the order to all urea producers in Germany is necessary, as a practical matter, in order to preserve the integrity of the order and prevent the potential transshipment of urea.

SKW opposes extension of the order to all urea produced in Germany, arguing that under U.S. law such action would violate the due process rights of producers located outside the Five States since neither the Department nor the International Trade Commission (ITC) has investigated these producers. SKW also argues that this action would violate the 1947 GATT, which states that an investigation must be conducted before levying duties. SKW asserts that applying the results of an investigation covering part of an industry to an entire industry in a country, does not justify extending an order on one country to another country. Finally, SKW argues that Petitioner's discussion of circumvention is unfounded.

Hydro Agri also objects to extension of the order, arguing that extension would deprive Hydro Agri of its due process rights. According to Hydro Agri, Petitioner's concerns about circumvention are baseless.

Department Position: It would be contrary to the 1947 GATT and U.S. law for the Department to expand the geographic scope of the order on urea to include shipments from all of Germany. First, this result would be inconsistent with the principle, affirmed in the *Techsnabexport* case, that changes in the political borders of respondent countries do not affect the geographic scope of antidumping measures. 802 F. Supp. at 472. Second, both the 1947 GATT and U.S. law prohibit the assessment of antidumping duties in the absence of injury and LTFV determinations. Jackson, *World Trade And The Law of GATT,* 412–24 (1969); *see also* 19 U.S.C. 1673 (1988). Neither the Department nor the ITC has ever investigated imports of solid urea from the pre-unification territory of the FRG. *See SCM Corp.* v. *United States,* 473 F. Supp. 791, 793 (Cust. Ct. 1979) (antidumping duties may not be imposed or an order maintained without affirmative injury and LTFV determinations).

Third, since the original investigation was limited to urea from the Five States, producers outside the Five States did not satisfy the definition of ''interested parties'' eligible to participate in the investigations at the Department and the ITC. *See* 19 U.S.C. 1677(9) (1988); 19 CFR 353.2(k). Given that they were not (and could not have been) parties to the original investigation, they received no formal notice or opportunity to comment, either during the LTFV or injury investigation. They also lacked standing to appeal the final results of these proceedings. *See* 19 U.S.C. 1516a(d) (1988). These procedural safeguards are an essential aspect of every antidumping order. *See, e.g., Smith Corona Corp.* v. *United States,* 796 F. Supp. 1532, 1535 (CIT 1992) (''[v]arious procedural safeguards such as opportunity to respond and to be heard are built into the unfair trade laws'').

Comment 5: Petitioner argues that the administration of a bifurcated order will require additional measures (*i.e.,* monitoring and special Customs requirements) to ensure adequate consideration of administrative and enforcement issues.

SKW argues that the Department should disregard Petitioner's discussion of circumvention as irrelevant and unsupported.

Hydro Agri argues that special Customs requirements are unnecessary, unduly burdensome and arbitrary, and that until there is real evidence that circumvention is even being contemplated, additional administrative burdens are unreasonable.

Department's Position: The record of this proceeding lacks adequate grounds upon which to require special administrative procedures in connection with this order.

Comment 6: SKW argues that if the Department does not revoke this order, it should reduce the cash deposit rate to zero percent, citing as precedent *Color Televisions from Korea. See Color Television Receivers from Korea,* 49 FR 18336 (1984); *Gold Star Co., Ltd.* v. *United States,* 692 F. Supp. 1382, 1382 (CIT 1988).

Petitioner argues that reducing the cash deposit to zero would be contrary to law and claims that SKW's reliance on *Television from Korea* is misplaced.

Department's Position: This comment is moot. As noted in the ''Background'' section of this notice, as a result of the final results of a recent administrative review, SKWP's cash deposit rate was lowered to 0.00 percent.

Comment 7: Petitioner argues that before conducting a market-economy analysis the Department must first determine which post-unification shipments are eligible for such analysis.

SKW argues that the Department should use a market-economy analysis for all post-reunification shipments.

Department Position: These issues are not relevant to this proceeding. These final results concern the order's applicability to post-unification shipments of subject merchandise, not the appropriate economic analysis to be applied to such shipments.

Final Results

The Department determines to maintain the order on solid urea from the Five States and to allow entry of shipments from producers located outside the Five States without regard to antidumping duties.

Suspension of Liquidation

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of changed circumstances review, as provided for by section 751(b) of the Act. A cash deposit of estimated antidumping duties shall be required on shipments of the subject merchandise as follows: (1) The existing 0.00 percent cash deposit rate will remain in effect, pending further instructions, for shipments of solid urea produced by SKWP; (2) the existing 44.80 percent cash deposit rate will remain in effect, pending further instructions, for shipments of solid urea produced by all other firms located in the Five States; and (3) no cash deposit will be required for shipments of solid urea produced by firms located outside the Five States.

This changed circumstances review and notice are in accordance with section 752(b) of the Act (19 U.S.C. § 1675(b) (1988)) and 19 CFR 353.22(f).

Dated: January 23, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3486 Filed 2–11–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–404]

Certain Textile Mill Products From Argentina; Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Review, Consideration of Revocation of Order, and Intent to Revoke Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty review, consideration of revocation of order, and intent to revoke order.

SUMMARY: On April 2, 1996, the Department of Commerce initiated changed circumstances reviews of the countervailing duty orders on *Leather from Argentina* (55 FR 40212), *Wool from Argentina* (48 FR 14423), *Oil Country Tubular Goods from Argentina* (49 FR 46564), and *Carbon Steel Cold-Rolled Flat Products from Argentina* (49 FR 18006). The Department of Commerce initiated these reviews in order to determine whether, in light of the decision in *Ceramica Regiomontana v.* United States, 64 F.3d 1579, 1582 (Fed. Cir. 1995), the agency had the authority to assess countervailing duties on entries of merchandise covered by these orders occurring after September 20, 1991—the date on which Argentina became a ''country under the Agreement'' within the meaning of former section 303(a)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1303(a)(1) (1988; repealed 1994)). In the final results of these reviews, the Department of Commerce determined that, based upon the ruling in the *Ceramica* case, it lacked the authority to assess countervailing duties on unliquidated entries of merchandise covered by the four Argentine orders occurring on or after September 20, 1991. *Final Results of Changed Circumstances Countervailing Duty Reviews and Revocation and Amended Revocation of Countervailing Duty Orders,* (62 FR 41361).

As a result of the *Ceramica Regiomontana v. United States* decision and the changed circumstances reviews, the Department of Commerce is initiating a changed circumstances review of the countervailing duty order on *Certain Textile Mill Products from Argentina* (50 FR 9846) and preliminarily determining that it does not have the authority to assess countervailing duties on unliquidated entries of merchandise covered by the order occurring on or after September 20, 1991. Therefore, we intend to revoke this order with respect to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the period May 18, 1992 through December 31, 1994. (The order has been revoked on two previous occasions. For a further discussion of these revocations and the resulting period affected by this preliminary determination, see the **SUPPLEMENTARY INFORMATION** section below). We invite interested parties to comment on this notice of initiation and preliminary results.

EFFECTIVE DATE: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Kelly Parkhill, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the URAA. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations published in the **Federal Register** on May 19, 1997 (62 FR 27296).

History of the Countervailing Duty Order on Textile Mill Products From Argentina

The countervailing duty order on *Certain Textile Mill Products from Argentina* was issued on March 12, 1985 pursuant to former section 303(a)(1) of the Act. Under former section 303, the Department of Commerce (the Department) could assess (or ''levy'') countervailing duties without an injury determination on two types of imports: (i) Dutiable merchandise from countries that were not signatories of the 1979 Subsidies Code or ''substantially equivalent'' agreements (otherwise known as ''countries under the Agreement''), and (ii) duty-free merchandise from countries that were not signatories of the 1947 General Agreement on Tariffs and Trade. *See* S. Rep. 249, 96th Cong. 1st Sess. 103–06 (1979); H. Rep. No. 317, 96th Cong., 1st Sess. 43, 49–50 (1979). At the time this order was issued, textile mill products from Argentina were dutiable. Also at that time, Argentina was not a ''country under the Agreement.'' In short, U.S. law did not require an injury determination as a prerequisite to the issuance of the order, and none was provided.

On August 13, 1990, the Department revoked the countervailing duty order on *Certain Textile Mill Products from Argentina* pursuant to § 355.25(d)(4)(iii) of the Department's then-current regulations. *See Certain Textile Mill Products from Argentina* (55 FR 32940). The Department's decision to revoke the order was challenged before the U.S. Court of International Trade (CIT). On March 24, 1992, the CIT reversed the Department's decision, holding that a domestic interested party had properly objected to the Department's intent to revoke the countervailing duty order. *See Belton Industries Inc.* v. *United States,* CIT Slip Op. 92–39 (March 24, 1992). In accordance with that decision, on May 7, 1992, the CIT ordered the Department to rescind the revocation and reinstate the countervailing duty order on certain textile mill products from Argentina. Subsequently, two related appeals were filed with the U.S. Court of Appeals for the Federal Circuit, *Belton Industries, Inc.* v. *United States, et al.,* CAFC Nos. 92–1419, –1421, and –1451, and *Belton Industries, Inc. v. United States, et al.,* CAFC Nos. 92–1452, and –1483. Because the United States withdrew its appeal (No. 92–1421), and Argentina was not a party to the appeals, the CIT decision became final and binding with respect to the order on certain textile mill products from Argentina. Consequently, the Department rescinded its revocation of the countervailing duty order on certain textile mill products from Argentina and reinstated the order on November 18, 1992, effective May 18, 1992. *See Certain Textile Mill Products from Argentina; Notice of Final Court Decision and Rescission of Revocation of Countervailing Duty Order* (57 FR 54368).

On March 1, 1994, the Department again published in the **Federal Register** (59 FR 9727) its intent to revoke the countervailing duty order on certain textile mill products from Argentina pursuant to 19 CFR 355.25(d)(4)(i)(1994) because no interested party had requested an administrative review for at least four consecutive review periods. The Department received a timely objection to the intended revocation

from the American Textile Manufacturers Institute (ATMI) and its member companies as well as the Amalgamated Clothing and Textile Workers Union (ACTWU).

The Department requested clarifying information from ATMI and ACTWU regarding the like products their members produced. The Department determined that ATMI and ACTWU did not qualify as interested parties with respect to one like product category, ''Other Miscellaneous Categories.'' Therefore, the Department revoked the order with respect to that like product. *See Certain Textile Mill Products from Argentina; Determination to Amend Revocation, in Part, of the Countervailing Duty Order* (62 FR 41365).

As explained above, the countervailing duty order on certain textile mill products from Argentina was issued pursuant to former section 303. In the Uruguay Round Agreements Act of 1994 (URAA), which amended the Act, section 303 was repealed in part because the new Agreement on Subsidies and Countervailing Measures prohibits the assessment of countervailing duties on imports from a member of the World Trade Organization without an affirmative injury determination. The URAA added section 753 to the Act, which provided domestic interested parties with an opportunity to request an injury investigation for orders that had been issued pursuant to former section 303.

Because no domestic interested parties exercised their right under section 753(a) of the Act to request an injury investigation on certain textile mill products from Argentina, the International Trade Commission made a negative injury determination with respect to this order, pursuant to section 753(b)(4) of the Act. As a result, the Department revoked this countervailing duty order, effective January 1, 1995, pursuant to section 753(b)(3)(B) of the Act. *See Revocation of Countervailing Duty Orders* (60 FR 40,568).

The Ceramica Regiomontana v. United States (Ceramica) Decision

On September 6, 1995, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held, in a case involving imports of dutiable ceramic tile from Mexico, that once Mexico became a ''country under the Agreement'' on April 23, 1985 pursuant to the Understanding between the United States and Mexico Regarding Subsidies and Countervailing Duties (the Mexican MOU), the Department could not assess countervailing duties on tile from that country under former section 303(a)(1) of the Act. *Ceramica,* 64 F.3d at 1582. ''After Mexico became a 'country under the Agreement,' the only provision under which ITA could continue to impose countervailing duties was section 1671.'' *Id.* One of the prerequisites to the assessment of countervailing duties under 19 U.S.C. 1671 (1988), according to the Federal Circuit, is an affirmative injury determination. *See also Id.* at section 1671e. However, at the time the countervailing duty order on ceramic tile was issued, the requirement of an affirmative injury determination under U.S. law was not applicable. Therefore, the Federal Circuit looked to see whether the statute contained any transition rules when Mexico became a country under the Agreement which might provide the order on tile with the required injury test. Specifically, the court looked at section 104(b) of the Trade Agreements Act of 1979, Public Law 96–39 (July 20, 1979) (1979 Act).

Section 104(b) was designed to provide an injury test for certain countervailing duty orders issued under former section 303 prior to the effective date of the 1979 Act (which established Title VII and, in particular, section 701 of the Act). However, in order to induce other countries to accede to the 1979 Subsidies Code (or substantially equivalent agreements), the window of opportunity was intentionally limited. In order to qualify (i) the exporting nation had to be a country under the Agreement (*e.g.,* a signatory of the Subsidies Code) by January 1, 1980, (ii) the order had to be in existence on January 1, 1980 (*i.e.,* the effective date of Title VII), and (iii) the exporting country (or in some instances its exporters) had to request the injury test on or before January 2, 1983.

In *Ceramica,* the countervailing duty order on ceramic tile was issued in 1982 and Mexico did not become a country under the Agreement until April 23, 1985. Therefore, in the absence of an injury test and the statutory means (under section 104 or some other provision) to provide an injury test, the Federal Circuit held that the Department could not assess countervailing duties on ceramic tile and would have to revoke the order effective April 23, 1985 (*i.e.,* the date Mexico became a ''country under the Agreement''). *Ceramica,* 64 F.3d at 1583.

On September 20, 1991, the United States and Argentina signed the Understanding Between the United States of America and the Republic of Argentina Regarding Subsidies and Countervailing Duties (Argentine MOU). Section III of that agreement contains provisions substantially equivalent to the provisions in the Mexican MOU that were before the Federal Circuit in the *Ceramica* case. Therefore, on April 2, 1996, the Department initiated changed circumstances reviews of the countervailing duty orders on *Leather from Argentina* (55 FR 40212), *Wool from Argentina* (48 FR 14423), *Oil Country Tubular Goods from Argentina* (49 FR 46564), and *Carbon Steel Cold-Rolled Flat Products from Argentina* (49 FR 18006). Each of these orders had been issued without an injury determination. The purpose of these reviews was to determine whether the Department had the authority, in light of the *Ceramica* decision, to assess countervailing duties on entries of merchandise covered by the orders occurring on or after September 20, 1991—the date on which Argentina became a ''country under the Agreement'' within the meaning of 19 U.S.C. 1303(a)(1) (1988; repealed 1994). The Department has now completed these reviews. In the *Final Results of Changed Circumstances Countervailing Duty Reviews and Revocation and Amended Revocation of Countervailing Duty Orders,* (62 FR 41361) (*Argentine Changed Circumstances*), published in the **Federal Register** on August 1, 1997, the Department determined that, based upon the ruling in the *Ceramica* case, it lacked the authority to assess countervailing duties on entries of merchandise covered by the four Argentine orders occurring on or after September 20, 1991.

Scope of the Review

Imports covered by this review are shipments of certain textile mill products from Argentina. The Harmonized Tariff Schedule of the United States (HTS) item numbers covered by the order are identified in Attachment A of this notice.

Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Review, Consideration of Revocation of Order, and Intent to Revoke Order

Pursuant to section 751(d) of the Act, the Department may revoke a countervailing duty order based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review). The Department's regulations at 19 CFR 351.216(d) require that the Department conduct a changed circumstances review in accordance with § 351.221, if it determines that changed circumstances sufficient to warrant a review exist. In addition, § 351.221(c)(3)(ii) allows the Department to combine the notice of initiation of the review and the

preliminary results of review if it determines that expedited action is warranted.

In accordance with §§ 751(b)(1) and 751(d) of the Act, and §§ 351.216 and 351.221(c)(3) of the Department's regulations, we are initiating this changed circumstances review. We have further determined that expedited action is warranted and are, therefore, combining the notices of initiation and preliminary results. Based upon our analysis of the *Ceramica* decision and the *Argentine Changed Circumstances* reviews, we have preliminarily determined that the order on *Certain Textile Mill Products from Argentina* became entitled to an injury test as of September 20, 1991—the date on which Argentina became a ''country under the Agreement'' within the meaning of 19 U.S.C. 1303(a)(1) (1988; repealed 1994). Furthermore, in the absence of an injury determination or the statutory authority to provide an injury test, the Department does not have the authority to assess countervailing duties on unliquidated entries of certain textile mill products from Argentina occurring on or after September 20, 1991. As a result, we intend to revoke this order with respect to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the period May 18, 1992 (the date on which the order was reinstated pursuant to the *Belton* decision) through December 31, 1994. The Department has previously revoked the countervailing duty order on textile mill products from Argentina for all entries occurring on or after January 1, 1995. *See Revocation of Countervailing Duty Orders* (60 FR 40568).

If our final results remain unchanged, the revocation will apply to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the period May 18, 1992 (the date on which the Department reinstated the order pursuant to the *Belton* decision) through December 31, 1994.

Therefore, we intend to instruct the U.S. Customs Service to liquidate all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 18, 1992, and on or before December 31, 1994, without regard to countervailing duties. We also intend to instruct the U.S. Customs to refund with interest any estimated countervailing duties collected with respect to those unliquidated entries.

Public Comment

Interested parties may request a hearing not later than 30 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted five days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is published in accordance with section 751(b)(1) of the Act (19 U.S.C. section 1675(b)(1)).

Dated: February 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix A (C–357–404)—HTS List for Certain Textile Mill Products From Argentina

HTS Numbers

5111.1170, 5111.1960,[1] 5111.2090, 5111.3090, 5111.9090, 5112.1120, 5112.1990, 5112.2030, 5112.3030, 5112.9090, 5205.1110, 5205.1210, 5205.1310, 5205.1410, 5205.2400,[2] 5205.3100, 5205.3200, 5205.3300, 5207.1000, 5207.9000, 5407.9105, 5407.9205, 5407.9305, 5407.9405, 5515.1305, 5515.1310, 5801.3600, 6302.600010, 6302.600020, 6302.910005, 6302.910050, 6305.2000, 6305.9000.

[FR Doc. 98–3617 Filed 2–11–98; 8:45 am]

BILLING CODE 3510–DS–P

[1] Coverage limited to fabric, value not over $19.84/kg.

[2] Coverage limited to yarn, not exceeding 68 nm.

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No: 980205029–8029–01]

RIN 0640–ZA01

Minority Business Roundtable

AGENCY: Minority Business Development Agency (MBDA), Commerce.

ACTION: Notice.

SUMMARY: Funds in the amount of $150,000 are available to conduct a competitive grant solicitation for the most qualified applicant who will plan, organize and coordinate the appropriate resources of the public and private sectors for the development of a self-sustaining Minority Business Roundtable (MBR). An MBR is hereby defined as business owners working together on issues affecting mutual long-term growth. The MBR shall be designed to generate and advocate policy positions of the minority business community regarding consequential issues of economic and social well being. It is essential that concerns of minority companies be heard by local, state and Federal decision-makers. Areas of concern include access to capital, community redevelopment, government regulations, international trade and investment, taxation, education, tort policies and corporate governance. Currently, there is no uniform voice, nor is there a policy discussion vehicle for the minority business community. To establish the MBR, the applicant shall propose a detailed statement of work in response to MBDA's Work Requirements. The statement of work shall entail mobilizing the minority business community and the necessary resources of the public and private sector for the formation and sustainment of the MBR. In the formation of the MBR, the applicant shall provide an approach for determining and addressing the issues and priorities of the minority business community.

The MBR will be national in scope and will serve minority firms throughout the fifty states. A minority firm is one that is defined by Executive Order 11625, effective October 13, 1991, as follows: '' 'Minority Business Enterprise' means one that is owned or controlled by one or more socially or economically disadvantaged persons.'' Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-Speaking Americans, American Indians, Eskimos and Aleuts, Asian Pacific Americans, Asian Indians and Hasidic Jews. The MBR will operate independently of any Federal, state/local government entity. It may be patterned after the existing Business Roundtable, a twenty-four year old association comprised of 220 Fortune 500 Chief Executive Officers (CEO). The CEOs serve on issue-oriented task forces and collectively direct research, supervise preparation of position papers, recommend policy positions

and advocate on specific issues affecting American businesses.

The primary objective of this project is two-fold: 1. The grantee shall plan, develop and implement the activities necessary to realize the formation of the MBR Planning Group and the design and operational structure of the MBR during the 12 month MBDA funding period, and 2. The grantee shall submit specific plans (including a non-Federal budget) to spearhead the establishment and sustainment of the MBR during the first 12 months after the award period.

Documentation is required for proposed private and public sector support of the non-federal budget in the application. MBDA funding of this project is subject to agency priorities and the availability of funds.

DATES: A pre-application conference to assist all interested applicants will be held on February 17, 1998, at 2:00 p.m., at the U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 5045, Washington, D.C. 20230. The closing date for applications is March 16, 1998, 30 days after the pre-application conference. Applications must be received in the MBDA Headquarter's Executive Secretariat no later than Monday, March 16, 1998 (5:00 p.m., eastern standard time).

Proper identification is required for entrance into any federal building.

ADDRESSES: Competitive Application Packages for the Minority Business Roundtable will be available from MBDA beginning February 12, 1998. To obtain a copy of the application package, please call, (202) 482–3261, or facsimile (202) 501–6137/(202) 482–5117. Or, you may send a written request with two (2) self-addressed mailing labels to Robert B. Hooks, Acting Chief of Administration Services, U.S. Department of Commerce, Minority Business Development Agency, 14th and Constitution Avenue, NW, Room 5087, Washington, D.C. 20230.

Send applications to the U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, NW, Room 5073, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Robert B. Hooks, Acting Chief of Administration Services, (202) 482–3261.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the budget period (12 months) is estimated at $150,000 in federal funds. There are no specific matching requirements for this award. The applicant shall be aware that funding for this award is limited to one 12 month budget period.

Executive Order 11625 and 15 U.S.C. § 1512 authorize MBDA to provide financial assistance to public and private organizations to assist in the growth and expansion of the nation's minority business sector.

The funding instrument for this project will be a grant. Competition is open to non-profit and for-profit organizations, state and local governments, American Indian Tribes and educational institutions. Applications will be evaluated on the following criteria: 1. The Expertise and Capabilities of the firm and its staff or proven track record for addressing the economic and social needs of the minority business community—50 points, 2. The Resources available to the applicant firm for the planning and formation of the MBR—20 points, 3. The firm's approach, Techniques and Methodologies, for performing the work requirements in an efficient, effective and creative manner—20 points, and 4. The realism of the firm's Estimated Cost of performing the work requirements, including any proposed cost-sharing—10 points. Applications will be evaluated by a review panel. An application must receive 70% of the points assigned to each element of the evaluation criteria to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will be reviewed by the Director of MBDA. Final award selection by the Director of MBDA shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of the firm most likely to further the stated purposes of the MBR. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The anticipated processing time for this award is 90 days from the closing date. If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC. Awards under this program shall be subject to all Federal laws, Federal and Department regulations, policies and procedures applicable to Federal assistance awards.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Application Forms and Kit

The Standard Forms 424, Application for Federal Assistance; 424A, Budget Information—Non-Construction Programs; and 424B, Assurances—Non-Construction Programs, (Rev 4–88), shall be used in applying for financial assistance under this program

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Accounts Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, or a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted or presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBR work requirements; and reporting inaccurate

or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Workplace Requirements and Lobbying,'' and the following explanations are provided:

1. *Nonprocurement Debarment and Suspension*—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

2. *Drug-Free Workplace*—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

3. *Anti-Lobbying*—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000 and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

4. *Anti-Lobbying Disclosures*—Any applicant that has paid or will pay lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DoC in accordance with the instructions contained in the award document.

Buy American Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 105–119, Sections 607 (a) and (b).

Executive Order 12866: It has been determined that this notice is not significant for purposes of Executive Order 12866.

The Recipient shall comply with the provisions of the Fly America Act.

Dated: February 6, 1998.

Courtland Cox,

Acting Director, Minority Business Development Agency.

[FR Doc. 98–3499 Filed 2–11–98; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012398E]

Ecosystem Principles Advisory Panel; Advisory Panel Meeting

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

ACTION: Notice of advisory panel meeting.

SUMMARY: Pursuant to section 406 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which requires NMFS to establish an advisory panel to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities, NMFS is announcing the date, time, and location of the third and final advisory panel meetings scheduled as follows:

DATES: The third advisory panel meeting will be held Thursday, February 26, 1998, 9 a.m. to 6:15 p.m. and Friday, February 27, 1998, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Marriott Hotel, 103800 Overseas Hwy., Key Largo, FL 33037.

FOR FURTHER INFORMATION CONTACT: Ned Cyr, Office of Science and Technology, NMFS, 1315 East-West Hwy., Silver Spring, MD 20910; Telephone: (301)713-2363, Fax: (301)713-1875.

SUPPLEMENTARY INFORMATION: Section 406 of the Magnuson-Stevens Act required NMFS to establish an advisory panel, no later than April 11, 1997, to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities. The panel consists of 20 individuals with expertise in the structures, functions, and physical and biological characteristics of ecosystems. The panel also consists of representatives from the Regional Fishery Management Councils, states, fishing industry, conservation organizations, or others with expertise in the management of marine resources. The panel is required to submit a report to Congress by October 11, 1998, to include the following: an analysis of the extent to which ecosystem principles are being applied in fishery conservation and management activities, including research activities; proposed actions by the Secretary of Commerce and by Congress that should be undertaken to expand the application of ecosystem principles in fishery conservation and management; and such other information as may be appropriate. The first advisory panel meeting was held Wednesday, September 10 and Thursday, September 11, 1997, in Washington, DC. The second advisory panel meeting was held Monday, December 15 and Tuesday, December 16, 1997, in Seattle, WA. Time will be allotted for public comments at the meeting. Persons planning to comment at the panel meeting should notify NMFS at least 2 weeks prior to the meeting (close of business Wednesday, February 11, 1998).

Special Accommodations

The review panel meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ned Cyr at (301) 713-2363 at least 10 days prior to the advisory panel meeting.

Dated: February 6, 1998.

William W. Fox, Jr.,

Director, Office of Science and Technology.

[FR Doc. 98–3511 Filed 2–11–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered will include the DoD Personnel System Initiative concept and other matters related to the enhancement of Labor-Management Partnerships throughout DoD.

DATES: The meeting is to be held March 4, 1998, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by February 23, 1998, in order to be considered at the March 4 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-served basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: February 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3500 Filed 2–11–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Long-Range Air Power Panel Meeting

AGENCY: Under Secretary of Defense of Defense, Acquisition and Technology.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meetings of the Long-Range Air Power Panel on February 18, 19, 20, 26, 27, and March 13 and 14, 1998 from 0800 to 1800. In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that these Long-Range Air Power Panel concern matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly these meetings will be closed to the public in order to allow the Panel to discuss classified materials.

DATES: February 18, 19, 20, 26, 27, and March 13 and 14, 1998.

ADDRESSES: The Tank, 1801 N. Beauregard Street, Alexandria, VA for February 18, 19, 20, and March 13–14, 1998 meetings. Whiteman AFB, MO, for the February 26 and 27 meetings.

SUPPLEMENTARY INFORMATION: The Long-Range Air Power Panel (LRAP) was established October 8, 1997 in accordance with section 8131 of the Defense Appropriations Act, 1998. The mission of the Long-Range Air Power Panel is to provide the President and Congress a report containing its conclusions and recommendations concerning the appropriate B–2 bomber force and specifically its recommendation on whether additional funds for the B–2 should be used for continued low-rate production of the B–2 or for upgrades to improve deployability, survivability, and maintainability.

PROPOSED SCHEDULE AND AGENDA: The Panel will meet in closed session from 0800–1800 on February 18, 19, 20, and March 13 and 14, 1998 in the Tank at the Institute for Defense Analyses Bldg, 1801 Beauregard Street, Alexandria VA. The Panel will also convene at Whiteman AFB MO, on February 26 and 27, 1998 and receive briefings at the flight line and in the SCIF facility. During the closed sessions DoD staff and contractor personnel will present the panel with briefings and status updates of current U.S. long-range air power capabilities, employment strategies and force structure plans for the future. The Panel will work to develop and complete their recommendations for the President and the Congress during the meetings on March 13 and 14, 1998.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

FOR FURTHER INFORMATION CONTACT: Please contact Colonel Vic Saltsman at (703) 695–3165.

Dated: February 6, 1998.

[FR Doc. 98–3503 Filed 2–11–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Security Policy Advisory Board Action Notice

SUMMARY: The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC–29, which was signed by the President on September 16, 1994.

The Board will advise the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and practices as developed by the U.S. Security Policy Board, and will function as a federal advisory committee in accordance with the provisions of Public Law 92–463, the ''Federal Advisory Committee Act.''

The President has appointed from the private sector, three of five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) will chair the Board. Other members include: Rear Admiral Thomas Brooks, USN (Ret.) and Ms. Nina Stewart.

The next meeting of the Board will be held on 26 March 1998, at 0900 hours at Building 107 of Lockheed Martin in Sunnyvale Ca. The meeting will be open to the public.

For further information please contact Mr. Terence Thompson, telephone: 703–602–1098.

Dated: February 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3501 Filed 2–11–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Headquarters, U.S. Marine Corps

AGENCY: Department of the Navy, DoD.

ACTION: Notice of proposed information collection.

SUMMARY: The Marine Corps announces the proposed extension of a previously approved public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 13, 1998.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Commandant of the Marine Corps, (Code OR), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Gunnery Sergeant Hudson at (703) 614–1017.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: ''Academic Certification for Marine Corps Officer Candidate Program''; OMB Control Number 0703–0011.

Needs and uses: Used by Marine Corps officer procurement personnel, this form provides a standardized method for determining the academic eligibility of applicants for all Reserve officer candidate programs. Use of this form is the only accurate and specific method to determine a Reserve officer applicant's academic qualifications. Each applicant interested in enrolling in an undergraduate or graduate Reserve officer commission program completes and returns the form.

Affected Public: Individuals or Households.

Annual Burden Hours: 875.

Number of Respondents: 3,500.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

(**Authority:** 44 U.S.C. Sec. 3506(c)(2)(A))

Dated: February 2, 1998.

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–3535 Filed 2–11–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Headquarters, U.S. Marine Corps

AGENCY: Department of the Navy, DoD.

ACTION: Notice of proposed information collection.

SUMMARY: The Marine Corps announces the proposed extension of a previously approved public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 13, 1998.

ADDRESSES: Send written comments and recommendations on the proposed information collection to MCCDC, Training and Education Division, Head, Training Programs Branch, Code C462R, 2034 Barnett Avenue, Suite 201, Quantico, VA 22134–5012.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Mr. Les Wood at (703) 784–3705.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: ''Individual MCJROTC Instructor Evaluation Summary''; OMB Control Number 0703–0016.

Needs and uses: This form provides a written record of the overall performance of duty of Marine instructors who are responsible for implementing the Marine Corps Junior Reserve Officers' Training Corps (MCJROTC). The Individual MCJROTC Instructor Evaluation Summary is completed by principals to evaluate the effectiveness of individual Marine instructors. The form is further used as a performance related counseling tool and as a record of service performance to document performance and growth of individual Marine instructors. Evaluating the performance of instructors is essential in ensuring that they provide quality training.

Affected Public: Individuals or Households.

Annual Burden Hours: 60.

Number of Respondents: 120.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: Biennially.

(**Authority:** 44 U.S.C. 3506(c)(2)(A))

Dated: February 2, 1998.

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–3536 Filed 2–11–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Santa Margarita River Flood Control Project and Basilone Road Bridge Replacement Project at Marine Corps Base Camp Pendleton, California

AGENCY: Department of the Navy, DOD.

ACTION: Notice of record of decision.

SUMMARY: Pursuant to section 102(c) of the National Environmental Policy Act (NEPA) of 1969, and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to construct a 14,500 foot-long levee and a 2,300 foot floodwall combination and associated stormwater management system and a replacement Basilone Road Bridge at Marine Corps Base (MCB) Camp Pendleton, California. The Environmental Impact Statement (EIS) for these projects was prepared jointly by the Department of the Navy and Army Corps of Engineers. In addition, the U.S. Fish and Wildlife Service and the San Diego Regional Water Quality Control Board served as cooperating agencies during the analysis of potential impacts to the environment that may occur during construction, operation and maintenance of these projects.

FOR FURTHER INFORMATION CONTACT: Mr. Lupe Armas, Assistant Chief of Staff, Environmental Security, Marine Corps Base, Camp Pendleton, California, 92055, telephone (760) 725–3561.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(c) of the National Environmental Policy Act (NEPA) of 1969, and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to construct a 14,500 foot-long levee and a 2,300 foot

floodwall combination and associated stormwater management system and a replacement Basilone Road Bridge at Marine Corps Base (MCB) Camp Pendleton, California. The Environmental Impact Statement (EIS) for these projects was prepared jointly by the Department of the Navy and Army Corps of Engineers. In addition, the U.S. Fish and Wildlife Service and the San Diego Regional Water Quality Control Board served as cooperating agencies during the analysis of potential impacts to the environment that may occur during construction, operation and maintenance of these projects.

Proposed Action

The Proposed Action consists of construction of a flood control structure (a levee) at MCB Camp Pendleton to provide protection to Marine Corps Air Station (MCAS) Camp Pendleton, the Chappo Area, Sewage Treatment Plant (STP) 3, and the Santa Margarita Ranch House complex from a flood event of up to 100 years in magnitude; a stormwater management system to direct runoff from MCAS Camp Pendleton and the Chappo Area into the Santa Margarita River without creating a flood hazard; and replacement of a north-south circulation route across the Santa Margarita River at or in the vicinity of Basilone Road and Vandegrift Boulevard. The flood control structure would consist of a 14,500-foot-long levee and a 2,300-foot floodwall combination extending from STP 3 to just upstream of the Santa Margarita Ranch House complex. With this alignment, minimum airfield safety distances along the length of MCAS Camp Pendleton would be maintained. The alignment would transition sharply to run parallel to Vandegrift Boulevard downstream of the airfield for approximately 2,300 feet, and finally would be aligned to bulge out and around STP 3. The structure type would change from earthen levee to a floodwall along the 2,300-foot run parallel to Vandegrift Boulevard. This alignment would also include an upstream guide vane to the main levee. This vane would improve the hydraulics of the levee structure with respect to the impinging flow, and significantly reduce scour depths at the upstream end of the levee and the need for revetment protection.

The stormwater management system would drain surface runoff that becomes trapped behind the flood control structure. The system would have the capacity to manage runoff from approximately 2,100 acres, including MCAS Camp Pendleton and the Chappo Area. The collected stormwater would be pumped back into the river. The system would be designed to manage a storm event with a duration of up to 24 hours and a recurrence interval of up to 100 years.

The Basilone Road Bridge replacement project would involve construction of a 1,155 foot long, two-lane bridge over the Santa Margarita River. The bridge would be constructed to meet engineering standards for transporting military loads, as well as providing surface transportation for other users. The new bridge would allow water flow to pass safely underneath the bridge during a 100-year flood event. Rifle Range Road would be used for temporary access during project construction. In preparation for this use, a ten foot corridor on either side of the road would be maintained free of vegetation and the road would be resurfaced. Upon completion of project construction, Rifle Range Road would be removed and the area restored to the natural river condition.

Purpose and Need

The basic project purposes for the proposed action are:

1. To provide protection for all U.S. Marine Corps assets within the limit of the 100-year floodplain of the Santa Margarita River, including the entire MCAS Camp Pendleton.

2. To provide a permanent, all-weather crossing over the Santa Margarita River in the southeast portion of MCB Camp Pendleton.

MCB Camp Pendleton and MCAS Camp Pendleton maintain and operate facilities and provide services to support operations of aviation activities and units of operational forces of the Marine Corps. MCB Camp Pendleton is the only west coast Marine Corps installation where a comprehensive air, sea, and ground assault training scenario can be executed; therefore, its ability to operate is considered to be of paramount importance to national security. Facilities and operations in the portion of MCB Camp Pendleton adjacent to the Santa Margarita River are located in the 100-year floodplain for the river.

Heavy rainfall in 1993 resulted in the flooding of MCAS Camp Pendleton, portions of MCB Camp Pendleton, and destruction of the Basilone Road Bridge. The readiness and ability to support the missions of MCB Camp Pendleton and MCAS Camp Pendleton were seriously jeopardized because of the flooding and resulting damage. The flood damage caused operations to cease in the flood damaged areas and reduced the ability of the installation to perform the required missions for a period of seven months. The flooding also damaged structures and facilities, including buildings in the historic Santa Margarita Ranch House complex, structures in the Chappo Area, and STP 3. A temporary bridge was erected on the site of the destroyed bridge to reestablish the north-south road network.

To prevent future damage to property and the disruption of essential operations, construction of flood control facilities is required. These facilities would protect Marine Corps assets within the 100-year floodplain of the Santa Margarita River. In addition, replacement of the temporary Basilone Road Bridge is required in order to provide reliable north-south access across the Santa Margarita River in the southeast portion of MCB Camp Pendleton. The bridge must withstand a 100-year flood event.

Alternatives Considered

In preparing the EIS for the projects, an alternatives screening analysis was performed. The selection criteria were based on the need to optimize hydraulic control, sediment control, channel maintenance, channel width, military mission, air station flight operations, timeliness, project cost, water resources and biological resources. These criteria are discussed in detail in Appendix C of the Final EIS.

A screening analysis of flood control options for the Santa Margarita River evaluated an in-stream levee, an upland levee, relocation of the air station, a concrete-lined channel, a soft bottom channel, and an on-base detention dam. A previous evaluation of an off-base dam/reservoir on De Luz Creek was also reconsidered. The concrete-lined channel, soft-bottom channel, upland levee, on-base detention and off-base detention alternatives, and the relocation of MCAS Camp Pendleton were eliminated.

Camp Pendleton Alternatives Eliminated

1. Upland Levee

An upland levee would have to be adjacent to the runways at the air station. This would violate air safety criteria and preclude routine air station operations.

2. Concrete-Lined Channel

The height of levees on a concrete channel would intrude into the flight path and violate airfield safety criteria and this alternative would result in significant adverse environmental impacts.

3. Soft-Bottom Channel

The soft-bottom channel would not eliminate the need for routine channel

maintenance and would result in significantly adverse environmental impacts.

4. On-Base Detention Basins

Construction of on-Base basins would take an extensive amount of time to design and permit, delaying flood protection for the air station for an extended period of time. In addition, a basin would reduce downstream groundwater recharge and would adversely affect biological resources from both construction and inundation by water held in the dam.

5. Relocation of MCAS

The possibility of off-site alternatives on MCB Camp Pendleton was eliminated as infeasible based on the requirement that any relocation of MCAS Camp Pendleton must successfully accommodate safe air operations while minimizing impacts on the environment, local communities, military operations, and military and civilian airspace.

The proposed flood control project would protect approximately 800 developed acres that include numerous buildings and facilities, including MCAS Camp Pendleton. To relocate these facilities would require the dedication of 800 acres of land either on or off base. There would be potential significant impacts to listed species and habitat in this 800 acres. In comparison, the proposed project would permanently impact only 14.5 acres of habitat and 2.6 acres of jurisdictional wetlands. The proposed project would have much less impacts than relocating the facilities it would protect.

MCB Camp Pendleton operational siting constraints include potential interference with ordnance impact areas, ranges and ground training, amphibious, and aviation training activities. Important considerations include the air safety restrictions associated with proximity to training ranges. The locations of these ranges would cause approach, departure, and pattern flight tracks to traverse restricted or hazardous airspace.

There are 33 training areas at MCB Camp Pendleton that are used for tactical exercise and field training, including cantonments, ordnance impact areas (41,850 acres), and maneuver training areas. A deficiency of live-fire ranges exists at MCB Camp Pendleton as addressed in the Land and Training Area Requirements for MCB Camp Pendleton.

MCB Camp Pendleton is the only location on the west coast where Marine Corps amphibious training operations can be combined with elements of aviation activities to develop, evaluate, and exercise the full range of combat techniques. Functions provided by the aviation combat element include air reconnaissance, anti-air warfare, assault support, offensive air support, electronic warfare, and control of aircraft and missiles. Training for all of these functions is supported by the restricted airspace and Military Operating Areas of MCB Camp Pendleton.

Air Installation Compatible Use Zone requirements are another major factor affecting the siting of MCAS Camp Pendleton. This program includes analyses of Airfield Accident Potential Zones, Noise Zone impacts, and Imaginary Surface obstructions. Underlying land uses must be compatible with these restrictions and requirements.

Other geographic restriction criteria exclude relocation of these facilities. There are limited areas of sufficient topography to accommodate relocating this facility. Other constraints include earthquake faults and steep topography. Direct seismic effects include ground shaking and ground rupture, while indirect effects include dynamic settlement, rock falls, and slope instability. Large areas in excess of five-percent slope are also a constraint in locating an alternative site for MCAS Camp Pendleton.

The Detailed Inventory of Naval Shore Facilities Report for MCAS Camp Pendleton reflects the Current Plant Value (the return for selling a particular building) as of September 30, 1995. The listed figure of $235,213,000 was adjusted to $336,213,000 to include construction between 1995 and 1999 which is underway. The costs to cover site preparation, utility infrastructure to the site and environmental mitigation was estimated at $64,000,000. This total estimate of $400,000,000 covers only the 410 acres of the airfield area and does not cover the almost 400 acres of billeting, personnel support, maintenance, storage, office spaces and equipment parking located in the surrounding areas of Camp Pendleton which support the 3d Marine Aircraft Wing units that utilize the airfield. Current construction costs at MCAS Camp Pendleton and MCAS Miramar for the same type buildings shows that replacement costs would be significantly greater then the Current Plant Value used to evaluate this alternative. In comparison, the estimated cost of construction, mitigation, and maintenance of the flood control project is $21.3 million. Permanent all weather crossing of the Santa Margarita River would be required regardless of the location of MCAS Camp Pendleton. The total cost of relocating MCAS Camp Pendleton would be over 20 times the cost of the proposed projects.

Off Camp Pendleton Alternatives Eliminated

1. Off-Base Dam/Detention Basin

An off-Base detention dam would lengthen the time required to approve and construct flood protection, leaving MCB and MCAS Camp Pendleton unprotected for a longer period of time. In addition, the off-Base detention dam would reduce downstream groundwater recharge and would adversely affect biological resources from both construction and inundation by water held in the dam.

2. Relocation of MCAS

Off-Base relocation would include acquisition of property, personnel requirements, infrastructure requirements, and base operating costs. Relocating MCAS Camp Pendleton would include recreating the facilities needed for the 3,100 personnel and 160 helicopters currently assigned to MCAS Camp Pendleton. Additionally, as a result of the implementation of decisions by the Base Realignment and Closure (BRAC) Commission, two helicopter squadrons from MCAS Tustin and two helicopter squadrons from MCAS El Toro will be relocated to MCAS/MCB Camp Pendleton in 1999.

Marine Corps Bases/Air Stations are geographically positioned into interdependent complexes of supporting installations on the East Coast, West Coast, and in the Pacific. The major ground operational/tactical base on the West Coast is MCB Camp Pendleton. MCAS Camp Pendleton lies completely within the boundaries of MCB Camp Pendleton and allows for intense helicopter operations without the requirement for excessive transit time or flight within civil air space.

Other air stations within 200 air miles (near the upper-most range limits for the CH–46 helicopters) of MCAS/MCB Camp Pendleton are MCAS Miramar, Naval Air Facility (NAF) El Centro, Naval Air Station (NAS) North Island, and March Air Force Base (AFB).

In accordance with the approved recommendations of the Base Realignment and Closure Commission, MCAS Miramar will receive four additional helicopter squadrons and associated support operations. MCAS Miramar does not have the operational capacity or facilities to receive MCAS Camp Pendleton's existing 3,100 personnel, 160 rotary-wing aircraft with

associated maintenance and administration support resources in six helicopter squadrons, and the four additional helicopter squadrons mandated by BRAC.

The primary purpose of NAF El Centro is to support transient aircraft using nearby ranges. However, the base was built in 1943 and has severely deteriorated; the hangars are substandard, maintenance facilities are insufficient, only one runway is operational, and the remaining runways are closed due to their deteriorated condition. Additionally, the distance, although less than 200 miles, is at the upper limits for the range of CH–46 helicopters, thus requiring refueling at Camp Pendleton to conduct operations and training in Camp Pendleton airspace. Utilization of this facility would require huge financial expenditures.

NAS North Island is located approximately one mile from Lindbergh Field (the major commercial airport in San Diego, California) and is adjacent to downtown San Diego. NAS North Island is considered fully utilized at present with almost no expansion capability. Further, training events such as helicopter touch and go and Ground Control Approach (GCA) could not be efficiently conducted.

March AFB is in the process of being converted to an Air Force Reserve Base and joint civilian use facility in accordance with the 1993 BRAC Commission's recommendations. The facilities are insufficient and could not facilitate Marine Corps operational requirements. Relocation to March AFB would require increased infrastructure, costs, manpower needs, and delays in training.

Discussion of these other alternative air station facilities that were considered but eliminated is contained in the Realignment to MCAS/MCB Camp Pendleton EIS (BRAC EIS) which is referenced in the Final EIS for the current flood control and bridge replacement projects.

In addition to the infrastructure costs associated with relocating the MCAS on Camp Pendleton (if even possible), the relocation costs off-Base would include land acquisition. This would include replacing the approximately 800 acres, as well as other required replacements such as additional family housing, recreational facilities, commissaries and exchanges at the new location.

Proposed Levee Alternatives

The results of the screening analysis identified a levee and associated stormwater management system as the most feasible and least environmentally damaging flood control method. Three alternative levee alignments were identified and analyzed in detail in the Final EIS.

Levee Alignment 3, the preferred alternative, is a 14,500 foot-long levee and a 2,300 foot floodwall combination extending from STP 3 to just upstream of the Santa Margarita Ranch House Complex. With this alignment, minimum airfield safety distances along the length of MCAS Camp Pendleton would be maintained. The alignment would transition sharply toward and then run parallel to Vandegrift Boulevard downstream of the airfield for approximately 2,300 feet, and finally would be aligned to bulge out and around STP 3. The structure type would change from earthen levee to a floodwall along the 2,300 foot run parallel to Vandegrift Boulevard. This alignment would also include an upstream guide vane to the main levee. This vane would improve the hydraulics of the levee structure with respect to the impinging flow, and significantly reduce scour depths at the upstream end of the levee and the need for revetment protection. The guide vane would be constructed in the same manner as the levee and would result in a significantly smaller cumulative footprint and less potential impacts to riparian habitat than the training structures proposed with levee alignments 1 and 2.

Levee Alignment 1 is a 16,585 foot-long levee extending from STP 3 north to approximately 1,000 feet upstream of the Santa Margarita Ranch House Complex. This alternative would include three upstream flow training structures and shaving of the hillside upstream of Basilone Road Bridge. Minimum airfield safety distances along the length of the MCAS Camp Pendleton airfield would be maintained. This levee alignment would be a smooth line between the west end of the airfield and STP 3.

Levee Alignment 2 is a 15,200 foot-long levee extending from STP 3 to just upstream of the Santa Margarita Ranch House Complex. This alternative would not include hillside shaving, but would incorporate six river training structures upstream of Basilone Road Bridge and several similar structures downstream of Basilone Road. This alignment would be identical to Levee Alignment 1 from STP 3 to the downstream side of Basilone Road. Minimum airfield safety distances along the length of the MCAS Camp Pendleton airfield would be maintained.

Construction of a levee would require a stormwater management system to drain surface runoff that becomes trapped behind the flood control structure. The system would need the capacity to manage runoff generated from approximately 2,100 acres during a 100-year storm event with a 24 hour duration. The stormwater system would collect stormwater and pump it back into the Santa Margarita River. Two alternative stormwater management systems to accommodate surface runoff requirements associated with each levee alignment were analyzed in the Final EIS. For Levee Alignment 3, the preferred alternative, an existing inundation area would be used for temporary management and removal of stormwater through existing culverts under, and an earthen ditch parallel to Vandegrift Boulevard, and then discharge into the Santa Margarita River. The Stormwater Management System for levee alignments 1 and 2 would use the same existing inundation area as Levee Alignment 3, but an additional inundation area would be created behind the levee and used to manage stormwater runoff. The inundation areas used to manage stormwater for levee alignments 1 and 2 would necessitate smaller emergency pumps than those required for Levee Alignment 3.

Proposed Bridge Replacement Alternatives

A Camp Pendleton transportation planning analysis identified five alternatives for the replacement of Basilone Road Bridge. Construction of a suspension bridge was eliminated because it would violate airfield safety criteria and compromise the operational readiness of the air station. Construction of a new bridge at Hospital Road was eliminated because it would bisect critical training areas and would not be consistent with the operational requirements of the base. The remaining three alternatives involve various alignments along Basilone Road. Each of these three alternatives is summarized below as bridge alignments A, B, and C.

Bridge Alignment A, the preferred alternative, will follow the existing alignment. With this alternative, the temporary Basilone Road Bridge will be replaced in its existing alignment providing a river channel width of approximately 1,155 feet over the newly constructed levee. The height of the new bridge will not cause an encroachment into the runway approach-departure clearance zone of the MCAS Camp Pendleton airfield; however, certain high profile vehicles (e.g., tractor-trailer trucks), will intrude into the approach-departure clearance zone. Traffic lights will be installed, which will be operated by the MCAS control tower, to control the flow of traffic on the bridge to

prevent this encroachment during landings and take-offs of aircraft.

Bridge Alignment B is an east curve alignment. This alignment would begin at the existing Basilone Road alignment on the north bank of the river and curve to the east to avoid runway approach-departure clearance zone encroachment from traffic on the bridge. Bridge Alignment B would be slightly longer at 1,375 feet.

Bridge Alignment C, the Rattlesnake Canyon Road alignment, would construct a new roadway and bridge alignment. The bridge would be created about 1,200 feet northeast of the existing alignment and southwest of the existing intersection of Rattlesnake Canyon Road and Vandegrift Boulevard. With this alternative, a 2,000 foot-long bridge would be constructed and 2,500 feet of new roadway would be required on the north bank of the river.

A comparison of the three levee alternatives, three bridge alternatives, and two stormwater management alternatives is provided in Table 1.

TABLE 1.—COMPARISON OF ALTERNATIVES

Influencing factor	Bridge alignment A—existing alignment	Bridge alignment B—east curve	Bridge alignment C—Rattlesnake Canyon
	Levee alignment 3 stormwater management: pumphouse		
Ground Disturbance—Permanent (acres)	25	25	27
Levee [A]	18	18	18
Spur Dikes/Silt Fences	0	0	0
Bridge Approaches (North & South, feet)	3,150	3,150	8,650
Ground Disturbance—Temporary (acres)	66	66	85
Levee	51	51	51
Spur Dikes/Silt Fences	0	0	0
Bridge and Roadway Approaches	15	15	34
	Levee alignment 1 stormwater management: pumphouse		
Ground Disturbance—Permanent (acres)	67	67	69
Levee [A]	51	51	51
Spur Dikes/Silt Fences	9	9	9
Bridge Approaches (North & South, feet)	3,150	3,150	8,650
Ground Disturbance—Temporary (acres)	76	76	95
Levee	50	50	50
Spur Dikes/Silt Fences	11	11	11
Bridge and Roadway Approaches	15	15	34
	Levee alignment 2 stormwater management: pumphouse		
Ground Disturbance—Permanent (acres)	41	41	43
Levee [A]	16	16	16
Spur Dikes/Silt Fences	18	18	18
Bridge Approaches (North & South, ft.)	3,150	3,150	8,650
Ground Disturbance—Temporary (acres)	75	75	94
Levee	44	44	44
Spur Dikes/Silt Fences	16	16	16
Bridge and Roadway Approaches	15	15	34

[A] Includes earthen levee, floodwall, guide vanes, roadway realignments, and hillside grading as they apply to each conceptual project alternative.

Rationale for the Preferred Alternative

The three alternative levee alignments and three alternative Basilone Road Bridge Replacement alignments were combined to provide nine project alternatives, which were evaluated in the Final EIS. The no action alternative was also evaluated. The preferred alternative (3A) combines Levee Alignment 3 and associated stormwater management system, and Bridge Alignment A.

Hydraulic and Sediment Transport Analyses, conducted in February 1997, at the request of the Army Corps of Engineers, U.S. Environmental Protection Agency, and U.S. Fish and Wildlife Service, concluded that the proposed projects would not significantly alter the system-wide geomorphology and river mechanics of the Santa Margarita River. Project effects on flow depth, velocity, and sediment transport capacity would be minimal and predominantly confined to three areas within the project limits. Hydraulic and sediment transport effects upstream and downstream of the project area would be negligible.

Although levee Alignments 1 and 2 would have more favorable cost and engineering factors, Alignment 3 is the least damaging from an environmental perspective. The design of alternative 3 avoids and minimizes impacts to riverine habitats to the maximum extent practical. Differences between Alignment 3 and the other levee alternatives include elimination of proposed spur dikes and reconfiguration of the downstream portion of the levee to a floodwall along Vandegrift Boulevard. The preferred alternative represents a reduction of impacts to riverine habitat when compared with the other levee alternative alignments of 20 acres less direct permanent impact, 8.4 acres less direct temporary impact, and 48 acres less indirect impacts due to isolation of habitat. The preferred alternative has resulted in a reduced impact to Corps jurisdictional waters of the U.S. and wetlands by 7.8 acres less permanent impact, 4.2 acres less temporary impact, and 30.9 acres less

impact associated with isolation of habitat.

Tables 2 and 3, respectively, show the permanent, temporary and isolation impacts of the levee and bridge alternatives. In all cases, levee Alignment 3 and Bridge Alternative A would result in lower impacts to habitat and wetlands than the other alternatives considered. The lower impacts to riparian habitat will translate to less impacts to Federally-listed endangered species and other riparian dependent species. Therefore, the preferred alternative would be consistent with the requirements of NEPA and the Clean Water Act, is the least environmentally damaging, and is determined to be the environmentally preferred alternative.

TABLE 2.—COMPARISON OF HABITAT AND WETLAND IMPACTS ASSOCIATED WITH ALTERNATIVE LEVEE ALIGNMENTS

Levee alternative	Permanent impacts (acres)		Temporary impacts (acres)		Isolated acreage	
	Total habitat	Wetlands	Total habitat	Wetlands	Total habitat	Wetlands
1	70.1	13.8	116.3	16.2	148	45.5
2	29.6	10.1	37.5	14.9	129	42.3
3	13	2.8	34.6	10.7	78.8	11.4

Acreage of wetland impacts is a subset of the acreage of total habitat impacts.

TABLE 3.—COMPARISON OF HABITAT AND WETLAND IMPACTS ASSOCIATED WITH ALTERNATIVE BRIDGE ALIGNMENTS

Bridge alternative	Permanent impacts (acres)		Temporary impacts (acres)	
	Total habitat	Wetlands	Total habitat	Wetlands
A	1.5	0.3	2.1	0.6
B	3.7	0.8	4	1.3
C	5.8	1.2	7.5	3

Acreage of wetland impacts is a subset of the acreage of total habitat impacts.

Mitigation

The lower Santa Margarita River is an intact riparian corridor ranging from 1,000 to 2,000 feet wide. The river corridor contains a mosaic of riparian and freshwater marsh habitats, but suffers from infestation by invasive, exotic weeds, primarily *Arundo donax*. The full suite of hydrologic, biogeochemical, and biologic riverine functions are performed at a level at or above most other rivers in southern California. The Santa Margarita River supports some of the largest known populations of the federally-listed endangered least Bell's vireo, southwestern willow flycatcher, and southwestern arroyo toad. Survey data from 1996 indicate the Santa Margarita River supports about 492 breeding pairs of vireo and 10 breeding pairs of flycatcher. Because the proposed project will be built in the floodplain of the Santa Margarita River, it will result in significant impacts to wetlands, riparian habitat and endangered species. The following provides a discussion of how these impacts will be mitigated.

Impacts to Corps jurisdictional waters of the United States and wetlands (Table 4) would be mitigated by restoration of wetlands and riparian habitat at Ysidora Flats. This 90 acre area is within the floodplain of the Santa Margarita River, downstream of the proposed project site. Ysidora Flats were historically separated from the river by a series of berms and used for percolation and groundwater recharge. The percolation ponds were damaged during the flooding of 1993 and subsequently discontinued. The Marine Corps has removed the berms, restoring the hydrologic connection between the area previously encompassing the ponds and the river. The area has been recontoured, and will be subject to ongoing invasive weed control and revegetation with native riparian species. It is expected that most of Ysidora Flats will become Corps jurisdictional wetlands and the remainder will become non-jurisdictional floodplain riparian habitat. This area is being used to mitigate the impacts of the previously authorized air station expansion as well as the proposed project.

TABLE 4.—MITIGATION FOR IMPACTS TO CORPS JURISDICTIONAL WATERS OF THE U.S. AND WETLANDS

Type of impact	Acreage of impact	Mitigation at Ysidora		On-site revegetation		Exotic weed control (per BO)	
		Ratio	Acres	Ratio	Acres	Ratio	Acres
All Permanent Impacts	2.6	3:1	7.8	0:1	0	10:1	26
Temporary Impacts to Freshwater Marsh	5.2	1:1	5.2	[a] 1:1	5.2	1.13:1	5.9
Temporary Impacts to Riparian Woodland	5.1	1:1	5.1	[b] 1:1	5.1	2:1	10.2
Temporary Impacts to Unvegetated Waters of U.S.	1	1:1	1	[c] 1:1	1	0:1	0
Full Isolation Behind Levee (all habitat types)	4.5	1.5:1	6.8	0:1	0	0:1	0
Partial Isolation Behind Guide Vane	6.9	Monitored until after the first 10-year event. If impacts occur, mitigation would be 3:1 at Ysidora. If impacts do not occur, no mitigation would be required.					

TABLE 4.—MITIGATION FOR IMPACTS TO CORPS JURISDICTIONAL WATERS OF THE U.S. AND WETLANDS—Continued

Type of impact	Acreage of impact	Mitigation at Ysidora		On-site revegetation		Exotic weed control (per BO)	
		Ratio	Acres	Ratio	Acres	Ratio	Acres
Total	25.3		25.9		11.3		42.1

[a] Revegetation would occur via natural recruitment.
[b] Revegetation would occur via active planting.
[c] Area would be recontoured to pre-construction conditions.

All temporarily impacted areas, including wildlife habitat, wetlands and waters of the U.S., will be kept free of invasive exotic plant species for five years to allow natural revegetation. This mitigation scheme is based on the Final Wetland Mitigation Plan for BRAC Projects at the MCAS Camp Pendleton, which was published on September 8, 1997. Monitoring concerning wetlands mitigation will be in accordance with the provision of this Plan. Consultation shall take place, prior to construction, with the Regional Water Quality Control Board to determine any necessary changes in the National Pollution Discharge Elimination System/Section 401 general permit.

Mitigation ratios for impacts to Army Corps of Engineers jurisdictional areas are summarized in Table 4. The Marine Corps would mitigate for indirect impacts to non-Clean Water Act jurisdictional floodplain riparian habitat which would be isolated behind the levee by either restoring jurisdictional wetlands at Ysidora Flats at a 0.33:1 ratio or by restoring non-wetland riparian habitat at Ysidora Flats at a 0.5:1 ratio. This would translate, respectively, to 29 or 41 acres of restoration at Ysidora Flats to compensate for loss of function associated with floodplain isolation.

In addition to the mitigation required by the Army Corps of Engineers, the U.S. Fish and Wildlife Service Biological Opinion (BO) 1–6–95–F–02 of October 30, 1995, requires that permanent impacts to all habitat types (including Army Corps of Engineers jurisdictional areas) be mitigated by removal of invasive weeds from the Santa Margarita River at a 10:1 ratio. Temporary impacts must be mitigated by removal of invasive weeds at ratios ranging from 0.5:1 to 2:1 depending on the sensitivity of the habitat type being temporarily impacted. This BO fulfills compliance requirements under Section 7 of the Endangered Species Act. Monitoring for this mitigation will be accomplished as provided for in the BO.

Sensitive habitats will be properly delineated to determine construction zones and access roads. Lay-down areas will be located in disturbed or developed areas, and shall be fenced when adjacent to sensitive habitats. A qualified biologist shall monitor construction to insure there are no inadvertent impacts to sensitive species. To minimize impacts to arroyo southwestern toads during construction, exclosure fencing will be constructed around the footprint to a height minimum of 12 inches. In addition, surveys for this species and monitoring will be conducted. No habitat will be cleared during the breeding season of the least Bell's vireo and the southwestern willow flycatcher (March 15–August 31).

The Santa Margarita River Estuary will be monitored for sedimentation from construction activities. However, extensive hydrogeomorphic modeling performed for this project indicates that there should not be adverse downstream sedimentation effects. An erosion and sedimentation control plan will be prepared prior to construction.

Pre-construction surveys of biological resources and monitoring plans will be provided to the U.S. Fish and Wildlife Service. Pre-construction meetings with the U.S. Fish and Wildlife Service and the Army Corps of Engineers will be conducted relating to biological resources and to cultural resources. An upstream guide vane to mitigate the potential for turbulent flow conditions and associated erosion potential at the upstream end of the levee will be constructed as part of the preferred alternative. Monitoring of the jurisdictional wetlands and waters of the United States, partially isolated behind the guide vane, will be conducted for a minimum of five years, which must include a 10-year storm event.

Construction of the preferred alternative will require the disturbance of an archeological site eligible for listing on the National Register of Historic Places, and construction near the Santa Margarita Ranch House Complex which is listed on the National Register. Per 37 CFR 800.6(a), a Memorandum of Agreement, executed on February 5, 1998, among the U.S. Marine Corps, California State Historic Preservation Office, Advisory Council on Historic Preservation, and the Pechanga and Pauma bands of the Luiseno Mission Indian Tribe has been implemented. This agreement provides for the preparation of an Historic Properties Treatment Plan to specify the treatment for each historic property, including archaeological sites and buildings, within the Area of Potential Effect. This Agreement completes Section 106 requirements of the National Historic Preservation Act.

Public Involvement

Preparation of the EIS began with a public scoping process to identify issues that should be addressed in the document. Involvement in scoping was offered through a combination of public announcements and meetings with federal and state regulatory agencies. A Notice of Intent (NOI) to prepare an EIS was published in the **Federal Register** on January 9, 1996. In addition, copies of the NOI and Notice of the Public Scoping Meeting were sent to federal, state, and local agencies, as well as other interested parties; to radio, television, and print media; and to libraries in the vicinity of MCB Camp Pendleton. Advertisements announcing the scoping meeting were placed in several local and regional newspapers and posted on the community calendars of local cable television companies. The scoping period was from January 9 to March 10, 1996. A public scoping meeting was held on January 25, 1996 to solicit comments and concerns on the proposed action from the general public. Comments received on the scoping process focused on alternatives to the proposed action, alternative designs of the levee, wetlands, water quality, biological resources, cultural resources, air quality, and hazardous material handling during construction. The Notice of Availability of the Draft EIS was published in the **Federal Register** on July 18, 1997. The review and comment period for the Draft EIS was from July 18, 1997, through September 5, 1997. A public hearing regarding the Draft EIS was conducted on August 13, 1997. Comments were received from 18 agencies and organizations that

identified the following major concerns; relocation of facilities out of the floodplain, range and depth of alternatives, species and habitat types impacted, potential effects to archaeological sites, river hydrology and water quality, and wetlands. The Final EIS addressed issues raised in comments to the Draft EIS. The Notice of Availability of the Final EIS was published in the **Federal Register** on December 19, 1997. The Final EIS was distributed to federal, state, and local agencies, interested parties, and public libraries on December 19, 1997, and the comment period closed on January 19, 1998.

Agency Decision

On behalf of the Department of the Navy and the U.S. Marine Corps, I have decided to implement the proposed action through the preferred alternative, Alternative 3A, (Levee Alignment 3—A 14,500 foot-long levee and a 2,300 foot floodwall combination and Bridge Alignment A—Existing Alignment). The requirements of applicable Executive Orders have been considered. Specifically, the following determinations are made with respect to these Executive Orders:

Executive Order 11988, ''Floodplain Management''. I have determined that implementation of the Santa Margarita Flood Control Project is the only practicable alternative, consistent with law and policy, to avoid the potential severe consequences posed by potential significant flood events to existing multi-million dollar facilities at MCB Camp Pendleton and MCAS Camp Pendleton. All practicable means to avoid or minimize harm to the floodplain are included within those mitigation measures associated with the preferred alternative for this project.

Executive Order 11990, ''Protection of Wetlands''. I have determined that the preferred alternative is the least environmental damaging practicable alternative for the implementation of the Santa Margarita Flood Control Project. I have further determined that the preferred alternative incorporates all practicable measures to avoid or minimize adverse impacts to wetlands which may result from this project. In addition, all practicable mitigation measures to offset wetland impacts will be implemented. This determination includes consideration of, among other factors, the economic consequences and the potential impact upon the national security missions of MCB Camp Pendleton and MCAS Camp Pendleton posed by significant flood events within the Santa Margarita River.

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''. The proposed action has been evaluated with respect to environmental and social impacts, as well as access to public information and an opportunity for public participation in the NEPA process as required by this Executive Order. The project is consistent with the goals and provisions of this Executive Order and no disproportionate impacts to minority or low-income populations will occur.

I have determined that the preferred alternative is the least environmentally damaging practical alternative for the implementation of the Santa Margarita flood control and bridge replacement projects. The Department of the Navy believes there are no remaining issues to be resolved with respect to these projects. Questions regarding the Final EIS prepared for this action may be directed to Mr. Lupe Armas, Assistant Chief of Staff, Environmental Security, Marine Corps Base, Camp Pendleton, California, 92055, telephone (760) 725–3561.

Dated: February 8, 1998.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 98–3614 Filed 2–11–98; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 18, 1998 rather than the earlier announced date of February 25. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 10:00 a.m. at the same location and will include a presentation on GIS soils data and status report; 1998 DRBC meeting locations and events and discussion of the Commission's Ground Water Advisory Committee functions.

In addition to the subjects listed which are scheduled for public hearing at the 1:00 p.m. business meeting, the Commission will also address the following: Minutes of the January 28, 1998, business meeting; announcements; General Counsel's Report; report on Basin hydrologic conditions; a resolution to adopt the current expense and capital budgets for Fiscal Year 1999; a resolution concerning election of a Chairman at meetings of the U.S. Supreme Court Decree Parties with regard to DRBC drought-related resolutions; a resolution to authorize funding for a research study concerning rainfall frequency; a resolution concerning U.S. Geological Survey study of flow need issues in the Delaware Estuary; and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Under Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. Holdover: City of Bethlehem Authority D–97–47 CP

A proposed temporary surface water withdrawal project that entails installation of an emergency intake structure in the Beltzville Reservoir, just downstream of the confluence of Pohopoco Creek with the Reservoir's tailwater, in Towamensing Township, Carbon County, Pennsylvania. The withdrawal is planned to provide up to 15 million gallons per day during a three-year period while the applicant's Penn Forest Dam is undergoing reconstruction and refilling. The applicant's distribution system serves the City of Bethlehem and 11 other municipalities in its vicinity, in both Lehigh and Northampton Counties. This hearing continues that of January 28, 1998.

2. Borough of Clementon D–87–92 CP RENEWAL

An application for the renewal of a ground water withdrawal project to supply up to 31 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 9, 10 and 11. Commission approval on February 24, 1988 was limited to six years, subsequently revised to ten years, and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 31 mg/30 days. The project is located in Clementon Borough, Camden County, New Jersey.

3. Borough of Alburtis D–91–42 CP RENEWAL

An application for the renewal of a ground water withdrawal project to supply up to 6.5 mg/30 days of water to the applicant's distribution system from

Well Nos. 1, 2, 3 and 4. Commission approval on December 9, 1992 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 6.5 mg/30 days. The project is located in Alburtis Borough, Lehigh County, Pennsylvania.

4. Schwenksville Borough Authority D–92–39 CP RENEWAL

An application for the renewal of a ground water withdrawal project to supply up to 11.8 mg/30 days of water to the applicant's distribution system from Well Nos. 3, 4, 5, 6 and 7. Commission approval on February 17, 1993 was limited to five years. The total withdrawal from all wells will be to 11.8 mg/30 days based on current and predicted uses. The project is located in Schwenksville Borough, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

5. Mount Holly Water Company D–94–8 CP

An application for approval of a ground water withdrawal project to supply up to 108.5 mg/30 days of water to the applicant's Mount Holly System from existing Well Nos. 3R, 4, 5, 6 and 7, and to retain the existing withdrawal limit of 108.5 mg/30 days for all Mount Holly Water System wells. The project is located in Westampton and Mount Holly Townships, Burlington County, New Jersey.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Dated: February 3, 1998.

Susan M. Weisman,

Secretary.

[FR Doc. 98–3540 Filed 2–11–98; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1571–000]

American Electric Power Corporation; Notice of Filing

February 6, 1998.

Take notice that on January 26, 1998, the American Electric Power Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Power Sales Tariff, The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric Tariff First Revised Volume No. 2. AEPSC requests waiver of notice to permit the service agreements to be made effective for service billed on and after December 26, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commission of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 19, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3548 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3057–002]

Florida Power Corporation; Notice of Filing

February 6, 1998.

Take notice that on January 9, 1998, Florida Power Corporation tendered for filing an amendment to its open access transmission tariff in compliance with the Commission's order of November 25, 1997.

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 February 17, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3550 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–211–000]

Texas Eastern Transmission Corporation; Notice of Application

February 6, 1998.

Take notice that on January 30, 1998, Texas Eastern Transmission Corporation (TETCO), 5400 Westheimer Court, Houston, Texas 77056–5310 filed in Docket No. CP98–211–000 an application pursuant to Section 7(b) and 7(c) of the Natural Gas Act for permission and approval for TETCO to construct and operate certain replacement facilities in Jackson and Ripley Counties, Indiana and to abandon the existing pipeline being replaced, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, TETCO proposes to replace two discrete sections of 24-inch pipe which total 2,442 feet in length (630 feet and 1812 feet) in Jackson and Ripley Counties, Indiana. TETCO states that the new replacement facilities will enable TETCO to comply with the U.S. Department of Transportation's Minimum Federal Safety Standards and will ensure the continued safe and reliable operation of its system. TETCO indicates that the replacement segments will have a design delivery capacity equivalent to the facilities being replaced and will not change TETCO system's maximum daily design capacity. TETCO estimates the total cost of the replacement to be $2,001,000.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before February 27, 1998, 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 or 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 proceedings. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TETCO to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3523 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1524–000]

Virginia Electric and Power Company; Notice of Filing

February 6, 1998.

Take notice that on January 22, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service with North American Energy Conservation, Inc. (NAEC), and Tennessee Valley Authority under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon North American Energy Conservation, Inc. (NAEC), and Tennessee Valley Authority, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

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 February 19, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3549 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–220–001, et al.]

Allegheny Power Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

February 6, 1998.

Take notice that the following filings have been made with the Commission:

1. Allegheny Power Service Corporation

[Docket No. ER98–220–001]

Take notice that on December 11, 1997, Allegheny Power Service Corporation tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. COS de Guatemala, Sociedad Anonima

[Docket No. EG98–28–000]

On January 16, 1998, COS de Guatemala, Sociedad Anonima (Applicant), 250 West Pratt Street, 23rd Floor, Baltimore, MD 21201, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a private Guatemalan company organized as a Sociedad Anonima. Constellation Operating Services International and Constellation Operating Services International I jointly own 100 percent of Applicant's shares. Both Constellation Services and Constellation Services I are wholly owned by Constellation Services, Inc., which, in turn, is wholly owned by Constellation Power, Inc., which, in turn, is wholly owned by Constellation Holdings, Inc., which, in turn, is wholly owned by Baltimore Gas and Electric, an exempt holding company pursuant to Section 3(a)(2) of the Public Utility Holding Company Act of 1935. Applicant intends to operate certain facilities which will consist of various generating units having a current effective capacity of approximately 85 MW and located on the shores of Lake

Amaititlan, 32 kms outside Guatemala City and a gas turbine unit located in the Province of Escuintla, approximately 62 kms outside Guatemala City and which will be owned by Credieegsa y Cia. S.C.A., a Guatemalan company.

Applicant intends to expand the Generating Facilities between 60 and 185 MW through the upgrading of existing equipment and/or the installation of additional generating equipment.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Commonwealth Edison Company, Complainant v. Mid-Continent Area Power Pool and Each of Its Members, Individually, Respondents

[Docket No. EL98–19–000]

Take notice that on January 23, 1998, Commonwealth Edison Company (ComEd) submitted for filing a Complaint and Request for Expedited Relief against the Mid-Continent Area Power Pool (MAPP), and the MAPP members. The complaint concerns a curtailment procedure, referred to as the Line Loading Relief Procedure, applied by MAPP and its members under their open access transmission tariffs (the MAPP Procedure). For the reasons discussed in the Complaint, the MAPP Procedure violates the Federal Power Act and the Commission's Orders, Rules and Regulations thereunder, including Order No. 888.

ComEd requests that the Commission issue an order, on the expedited basis, directing MAPP and its members to revise the MAPP Procedure to provide for pro rata curtailment of firm transmission service provided under MAPP member transmission tariffs, as required under Order No. 888 and the Commission's pro forma tariff. In addition, ComEd seeks such other and further relief as the Commission deems proper, including the ordering of modifications to any applicable Commission-jurisdictional rate schedule or tariff, if necessary.

Comment date: March 9, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint shall be due on or before March 9, 1998.

4. Montana Power Company

[Docket Nos. ER96–334–002 and OA96–199–003]

Take notice that on January 2, 1998, Montana Power Company tendered for filing its compliance filing in the above-referenced dockets.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–162–001]

Take notice that on December 5, 1997, Ohio Edison Company and Pennsylvania Power Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Bangor Hydro Electric Company

[Docket No. ER98–463–001]

Take notice that on January 16, 1998, Bangor Hydro Electric Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Empire Limited Partnership #2

[Docket No. ER98–1125–000]

Take notice that on January 20, 1998, Northeast Empire Limited Partnership #2 (NELP#2), c/o Thomas D. Emero, Esq., Twenty South Street, P.O. Box 407, Bangor, Maine 04402–0407, a Delaware corporation, petitioned the Commission for an order accepting rate schedule for filing and granting waivers and blanket approvals.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER98–1551–000]

Take notice that on January 23, 1998, Arizona Public Service Company (APS), tendered for filing a transaction report for the fourth quarter of 1997 under APS FERC Electric Tariff, Original Volume No. 3.

A copy of this filing has been served the Arizona Corporation Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Yadkin, Inc.

[Docket No. ER98–1552–000]

Take notice that on January 22, 1998, Yadkin, Inc., tendered for filing a summary of activity for the quarter ending December 31, 1997.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Public Service Company

[Docket No. ER98–1553–000]

Take notice that on January 23, 1998, Maine Public Service Company submitted a Quarterly Report of Transactions for the period October 1 through December 31, 1997. This filing was made in compliance with Commission orders dated May 31, 1995 (Docket No. ER95–851) and April 30, 1996 (Docket No. ER96–780).

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Northern Indiana Public Service Company

[Docket No. ER98–1554–000]

Take notice that on January 23, 1998, Northern Indiana Public Service Company tendered for filing its Transaction Report for short-term transactions for the fourth quarter of 1997 pursuant to the Commission's order issued January 10, 1997 in Northern Indiana Public Service Company, 78 FERC ¶ 61,015 (1997).

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Black Hills Corporation

[Docket No. ER98–1555–000]

Take notice that Black Hills Corporation (Black Hills), which operates its electric utility business under the name of Black Hills Power and Light Company, on January 23, 1998, tendered for filing the Third Restated Energy Supply and Transmission Agreement, dated as of January 1, 1998, the Firm Transmission Service Agreement under Black Hills Corporation's FERC Network Integration Transmission Service Tariff, dated January 1, 1998, and the Network Operating Agreement, dated January 1, 1998, all between Black Hills and the City of Gillette, Wyoming (Gillette), in replacement of and to supersede the Second Restated Electric Power Energy Supply and Transmission Agreement, dated February 28, 1995, between Black Hills and Gillette, filed with the Commission and designated Black Hills Power and Light Company, Rate Schedule FERC No. 44 and Supplement No. 1 thereto. Black Hills requests that these agreements become effective on January 1, 1998.

The New Agreements reduce the quantity of capacity and energy to be sold to Gillette and provides for a change in the capacity charge and other minor changes.

Copies of the filing were served upon the parties to the New Agreements, the South Dakota Public Utilities

Commission, the Wyoming Public Service Commission, and the Montana Public Service Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Mexico

[Docket No. ER98–1556–000]

Take notice that on January 22, 1998, Public Service Company of New Mexico (PNM), tendered for filing Amendment One to Agreement Number 7–07–52–PO975 (Amendment One), between PNM, the Navajo Agricultural Products Industry (NAPI), and the Bureau of Indian Affairs (BIA), dated November 13, 1997.

PNM requests that Amendment One become effective upon the date which certain New Project Facilities associated with the provision of electrical power and transmission to the Navajo Indian Irrigation Project have been constructed, interconnected and declared operational by PNM. The estimated date for this to occur is April 15, 1998.

Copies of this notice have been served upon the Bureau of Reclamation, NAPI, BIA and the New Mexico Public Utility Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Power Fuels, Inc.

[Docket No. ER98–1557–000]

Take notice that on January 26, 1998, Power Fuels, Inc. (Power Fuels), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP), indicating that Power Fuels had completed all the steps for pool membership. Power Fuels requests that the Commission amend the WSPP Agreement to include it as a member.

Power Fuels requests an effective date of January 9, 1998, for the proposed amendment. Accordingly, Power Fuels requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER98–1558–000]

Take notice that on January 26, 1998, PECO Energy Company (PECO), filed under Section 205 of the Federal Power Act, 16 U.S.C. *et seq.* a Transaction Agreement dated December 19, 1997, with the Town of Littleton New Hampshire Water and Light Department (Littleton), under PECO's FERC Electric Tariff, Original Volume No. 1.

PECO requests an effective date of January 1, 1998, for the Agreement.

PECO states that copies of the filing have been supplied to Littleton and to the Pennsylvania Public Utility Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. MidAmerican Energy Company

[Docket No. ER98–1559–000]

Take notice that on January 26, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Non-Firm Transmission Service Agreements with Columbia Power Marketing Corporation (Columbia), dated January 20, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of January 20, 1998, for the Agreement with Columbia and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Columbia, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1560–000]

Take notice that on January 26, 1998, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and ConAgra Energy Services, Inc.

NSP requests that the Commission accept both the agreements effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Central Louisiana Electric Company, Inc.

[Docket No. ER98–1562–000]

Take notice that on January 26, 1997, Central Louisiana Electric Company, Inc. (CLECO), tendered for filing CLECO's Market Based Rate Tariff MR–1, the quarterly report for transactions undertaken by CLECO for the quarter ending December 31, 1997.

CLECO states that a copy of the filing has been served on the Louisiana Public Service Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. New Century Services, Inc.

[Docket No. ER98–1563–000]

Take notice that on January 26, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. New England Power Company

[Docket No. ER98–1564–000]

Take notice that on January 26, 1998, New England Power Company filed a Service Agreement and Certificate of Concurrence with Washington Electric Cooperative, Inc., under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Company

[Docket No. ER98–1565–000]

Take notice that on January 26, 1998, New England Power Company filed a Service Agreement and Certificate of Concurrence with Williams Energy Services Company, Inc., under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER98–1566–000]

Take notice that on January 26, 1998, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and Koch Energy Trading, Inc., (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified

in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on January 2, 1998.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. New England Power Company

[Docket No. ER98–1567–000]

Take notice that on January 26, 1998, New England Power Company filed a Service Agreement and Certificate of Concurrence with Entergy Power Marketing Corp., under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Potomac Electric Power Company

[Docket No. ER98–1568–000]

Take notice that on January 26, 1998, Potomac Electric Power Company filed its report of compliance with the Commission's Order, 81 FERC ¶ 61,257 (1997), ordering paragraph (T), directing the unbundling of certain wholesale sales contracts found to be inconsistent with the restructured PJM transmission arrangements made effective by the Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. PP&L, Inc.

[Docket No. ER98–1569–000]

Take notice that on January 26, 1998, PP&L, Inc., tendered its compliance filing as required by Ordering Paragraph (T) of the Commission's order in Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶ 61,257 (1997).

PP&L states that copies of this filing have been served on the PJM Office of Interconnection, and on the customers that purchase bundled capacity, energy and transmission service from PP&L under bilateral agreements, as identified in the compliance filing.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. GPU Energy/ Jersey Central Power, et al.

[Docket No. ER98–1570–000]

Take notice that on January 26, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively, and each doing business as GPU Energy) submitted a filing in compliance with ordering paragraph T of the Commission's November 25, 1997, Order Conditionally Accepting Open Access Transmission Tariff and Power Pool Agreements, Conditionally Authorizing Establishment of an Independent System Operator and Disposition of Control over Jurisdictional Facilities, and Denying Rehearings (Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶ 61,257 (1997)).

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. PECO Energy Company

[Docket No. ER98–1572–000]

Take notice that on January 26, 1998, PECO Energy Company (PECO), filed under Section 205 of the Federal Power Act, 16 U.S.C. § 792 *et seq.*, an Agreement dated December 22, 1997, with Williams Energy Services Company (Williams), under PECO's FERC Electric Tariff Original Volume No. 1.

PECO requests an effective date of January 1, 1998, for the Agreement.

PECO states that copies of this filing have been supplied to Williams and to the Pennsylvania Public Utility Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. UtiliCorp United Inc.

[Docket No. ER98–1573–000]

Take notice that on January 26, 1998, UtiliCorp Inc. (UtiliCorp), filed service agreements with Power Fuels, Inc., for service under its short-term firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. UtiliCorp United Inc.

[Docket No. ER98–1574–000]

Take notice that on January 26, 1998, UtiliCorp Inc. (UtiliCorp) filed service agreements with American Electric Power Service Corporation for service under its short-term firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. UtiliCorp United Inc.

[Docket No. ER98–1575–000]

Take notice that on January 26, 1998, UtiliCorp United Inc. (UtiliCorp) filed service agreements with American Electric Power Service Corporation for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. UtiliCorp United Inc.

[Docket No. ER98–1576–000]

Take notice that on January 26, 1998, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Power Fuels, Inc. for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Wisconsin Electric Power Company

[Docket No. ER98–1577–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on January 26, 1998, tendered for filing a short term firm and a non-firm transmission service agreement with Columbia Power Marketing Corporation (Columbia) under Wisconsin Electric's FERC Electric Tariff, Volume No. 7. Wisconsin Electric requests an effective date coincident with its filing. Wisconsin Electric is authorized to state that Columbia joins in the requested effective date.

Copies of the filing have been served on Columbia, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Wisconsin Power and Light Company

[Docket No. ER98–1578–000]

Take notice that on January 26, 1998, Wisconsin Power and Light Company (WP&L) tendered for filing an executed Form of Service Agreement for Non-firm Point-to-Point Transmission Service, establishing Tennessee Valley Authority as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of January 12, 1998, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Services, Inc.

[Docket No. ER98–1580–000]

Take notice that on January 26, 1998, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff entered into between Cinergy and Cinergy Services, Inc.

Cinergy and Cinergy, the Customer are requesting an effective date of January 1, 1998.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Union Electric Company

[Docket No. ER98–1582–000]

Take notice that on January 26, 1998, Union Electric Company (UE), tendered for filing a Letter Agreement dated November 5, 1997 under the provisions of the Facilities Use Agreement dated February 14, 1972 between Central Illinois Public Service Company and UE. UE asserts that the purpose of the Letter Agreement is to increase the facility use charges to adequately reflect cost of improved installations.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Niagara Mohawk Power Corporation

[Docket No. ER98–1583–000]

Take notice that on January 26, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk) filed Service Agreements for transmission and wholesale requirement services in conjunction with an electric retail access pilot program that was established by the New York Public Service Commission effective November 1, 1997. The Service Agreement for transmission services is under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 3. Niagara Mohawk's customer is Total Energy, Inc. The Service Agreement for wholesale requirements service is under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 4. Niagara Mohawk's customer is Total Energy, Inc. The Service Agreements have been modified by an order of the Commission in this proceeding dated November 7, 1997. Revised Service Agreements will be filed once the Commission has accepted Niagara Mohawk's compliance filing.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Consumers Energy Company

[Docket No. ER98–1584–000]

Take notice that on January 27, 1998, Consumers Energy Company (Consumers) tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service to the City of Holland pursuant to its Open Access Transmission Service Tariff filed on July 9, 1996.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the transmission customer.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Niagara Mohawk Power Corporation

[Docket No. ER98–1585–000]

Take notice that on January 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Energetix, Inc. This Transmission Service Agreement specifies that Energetix, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Energetix, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for Energetix, Inc., as the parties may mutually agree.

NMPC requests an effective date of January 21, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Energetix, Inc.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Kansas City Power & Light Company

[Docket No. ER98–1586–000]

Take notice that on January 26, 1998, Kansas City Power & Light Company tendered for filing its report for the fourth quarter ending December 1997 in the above-referenced docket.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. Wisconsin Public Service Corporation

[Docket No. ER98–1587–000]

Take notice that on January 27, 1998, Wisconsin Public Service Corporation (WPSC) tendered for filing an agreement with Manitiowoc Public Utilities for the upgrade of 69kV substation facilities.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Northern Indiana Public Service Company

[Docket No. ER98–1588–000]

Take notice that on January 27, 1998, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and SCANA Energy Marketing, Inc. (SEMI).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to SEMI pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to SEMI pursuant to the Wholesale Sales Tariff field by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of February 15, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. Delmarva Power & Light Company

[Docket No. ER98–1589–000]

Take notice that on January 26, 1998, Delmarva Power & Light Company (Delmarva) tendered for filing a summary of short-term transactions made during the fourth quarter of calendar year 1997 under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96-2571–000.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. Louisville Gas and Electric Company

[Docket No. ER98–1590–000]

Take notice that on January 27, 1998, Louisville Gas and Electric Company (LG&E) tendered for filing of its obligation to file the rates and agreements for wholesale transactions made pursuant to its market-based Generation Sales Service Tariff.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

44. Old Dominion Electric Company

[Docket No. ER98–1591–000]

Take notice that on January 26, 1998, Old Dominion Electric Company tendered for filing its transaction report for the quarter ended January 30, 1998.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. Pacific Northwest Generating Cooperative

[Docket No. ER98–1592–000]

Take notice that on January 26, 1998, Pacific Northwest Generating Cooperative tendered for filing its Transaction Report for the Quarter ended December 31, 1997.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

46. New York State Electric & Gas Corporation

[Docket No. ER98–1593–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on January 27, 1998 tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, service agreement under which NYSEG may provide capacity and/or energy to Allegheny Power (Allegheny), Public Service Electric & Gas Company (PSE&G) and Sonat Power Marketing L.P. (Sonat) (collectively the Purchasers), in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 1.

NYSEG has requested waiver of the notice requirements so that the service agreements with Allegheny, PSE&G, and Sonat become effective as of January 28, 1998.

The Service Agreements are subject to the Commission Order Authorizing Disposition of Jurisdictional Facilities and Corporate Reorganization issued on December 16, 1997 in Docket No. EC97–52–000.

NYSEG has served copies of the filing upon the New York State Public Service Commission, Allegheny, PSE&G, and Sonat.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

47. MidAmerican Energy Company

[Docket No. ER98–1594–000]

Take notice that on January 27, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303, submitted for filing with the Commission a Service Agreement dated January 1, 1998, with American Electric Power Service Corporation (AEPSC) entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 1998, for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on AEPSC, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

48. Virginia Electric and Power Co.

[Docket No. ER98–1595–000]

Take notice that on January 27, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing the Service Agreements between Virginia Electric and Power Company and the Town of Stantonsburg, North Carolina, the Town of Lucama, North Carolina, and the Town of Black Creek, North Carolina under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97–3561–001. Under the tendered Service Agreements, Virginia Power will provide services to the Town of Stantonsburg, North Carolina, the Town of Lucama, North Carolina, and the Town of Black Creek, North Carolina under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of February 1, 1998, the date of the first transaction under the Service Agreements.

Copies of the filing were served upon the Town of Stantonsburg, North Carolina, the Town of Lucama, North Carolina, and the Town of Black Creek, North Carolina, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

49. PECO Energy Company

[Docket No. ER98–1597–000]

Take notice that on January 27, 1998, PECO Energy Company filed a summary of transactions during the fourth quarter of calendar year 1997 under PECO's Electric Tariff Original Volume No. 1 accepted by the Commission in Docket No. ER95–770, as subsequently amended and accepted by the Commission in Docket No. ER97–316.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

50. Cambridge Electric Light Company

[Docket No. ER98–1598–000]

Take notice that on January 28, 1998, Cambridge Electric Light Company (Cambridge) tendered for filing a non-firm point-to-point transmission service agreement between Cambridge and Cinergy Capital & Trading, Inc. (Cinergy). Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will provide non-firm point-to-point transmission service to Cinergy under Cambridge's open access transmission tariff accepted for filing in Docket No. ER97–1337–000, subject to refund and issuance of further orders.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

51. Commonwealth Electric Company

[Docket No. ER98–1599–000]

Take notice that on January 28, 1998, Commonwealth Electric Company (Commonwealth) tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and Cinergy Capital & Trading, Inc. (Cinergy). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to Cinergy under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further orders.

Comment date: February 20, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3547 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–37–000, et al.]

Enron Europe Operations Limited, et al.; Electric Rate and Corporate Regulation Filings

February 5, 1998.

Take notice that the following filings have been made with the Commission:

1. Enron Europe Operations Limited

[Docket No. EG98–37–000]

Take notice that on January 29, 1998, Enron Europe Operations Limited (Applicant), with its principal office at Four Millbank, London, England SW1P 3ET, filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it is a corporation organized under the laws of England. Applicant will be engaged directly and exclusively in operating an approximately 478 MW combined cycle gas-fired electric generating facility located on the Marmara Sea, near Istanbul, Turkey, and selling electric energy at wholesale. Electric energy produced by the facility will be sold at wholesale to Turkiye Elektrik Uretim, Iletisim A.S. In no event will any electricity be sold to consumers in the United States.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company

[Docket Nos. EC96–19–012 and ER96–1663–013]

Take notice that on February 2, 1998, the California Independent System Operator Corporation (ISO), filed corrections to its Must-Run Unit List, originally submitted for filing on December 12, 1997 in this proceeding. The ISO requests waiver of the 60 day notice requirement to allow the proposed filing to take effect as of the ISO operations date.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Enron Guc Santrallari Isletme Limited Sirketi

[Docket No. EG98–36–000]

Take notice that on January 29, 1998, Enron Guc Santrallari Isletme Limited Sirketi (Applicant), with its principal office at Four Millbank, London, England SW1P 3ET, filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it is a limited liability company organized under the laws of the Republic of Turkey. Applicant will be engaged directly and exclusively in operating an approximately 478 MW combined cycle gas-fired electric generating facility located on the Marmara Sea, near Istanbul, Turkey, and selling electric energy at wholesale. Electric energy produced by the facility will be sold at wholesale to Turkiye Elektrik Uretim, Iletisim A.S. In no event will any electricity be sold to consumers in the United States.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. American Atlas #1, LTD., L.L.P.

[Docket No. EG98–38–000]

On January 30, 1998, American Atlas #1, Ltd., L.L.P., 4845 Pearl East Circle, Suite 300, Boulder, Colorado 80301, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant operates and sells electricity at wholesale produced by the nominally 75 megawatt American Atlas No. 1 Cogeneration Facility located in Rifle, Colorado (the Facility).

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Sierra Pacific Power Company

[Docket No. ER98–12–001]

Take notice that on January 21, 1998, Sierra Pacific Power Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. MidAmerican Energy Company

[Docket No. ER98–1473–000]

Take notice that on January 20, 1998, MidAmerican Energy Company (MidAmerican), P.O. Box 657, 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing changes to its Open Access Transmission Tariff (OATT). MidAmerican states that the purpose of the filing is to create a form of service agreement for firm point-to-point transmission service for less than one year, update the index of point-to-point transmission service customers and update the table of contents.

MidAmerican states that the current form of its OATT service agreement for firm point-to-point transmission service includes language incorporating the written specifications for the service. MidAmerican further states that it believes it is necessary to include this provision in agreements for long-term transactions to clarify that the service will be provided in accordance with the specifications agreed to by the parties but that this form of service agreement cannot be used as an umbrella agreement for short-term transactions without repeated filings with the Commission because the specifications vary from transaction to transaction. Therefore MidAmerican states that it is proposing an umbrella form of service agreement for short-term firm transactions which incorporates the short-term transaction specifications as posted on the OASIS.

MidAmerican proposes an effective date of January 23, 1998, for the tariff changes and requests a waiver of the 60-day notice requirement. MidAmerican states that good cause exists to grant the waiver because the changes to index and table of contents are ministerial and informational in nature and the changes to the form of agreement do not alter the substantive rights or obligations of MidAmerican, any existing customer or any future customer.

Copies of the filing were served upon representatives of customers having

service agreements under the MidAmerican OATT, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Indiana Gas and Electric Company

[Docket No. ER98–1474–000]

Take notice that on January 20, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing summary information on transactions that occurred during the period October 1, 1997 through December, 1997, pursuant to its Market Based Rate Sales Tariff accepted by the Commission in Docket No. ER96–2734–000.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ER98–1475–000]

Take notice that on January 20, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Columbia Power Marketing Corporation for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Public Service Company

[Docket No. ER98–1476–000]

Take notice that on January 20, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted an executed umbrella service agreement under Southwestern's market-based sales tariff with El Paso Electric Company (EPE). This umbrella service agreement provides for Southwestern's sale and EPE's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Cambridge Electric Light Company

[Docket No. ER98–1477–000]

Take notice that on January 20, 1998, Cambridge Electric Light Company (Cambridge), tendered for filing a non-firm point-to-point transmission service agreement between Cambridge and Williams Energy Services Company (Williams Energy). Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will provide non-firm point-to-point transmission service to Williams Energy under Cambridge's open access transmission tariff accepted for filing in Docket No. ER97–1337–000, subject to refund and issuance of further orders.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Pennsylvania Power Company

[Docket No. ER98–1478–000]

Take notice that on January 20, 1998, FirstEnergy Corp., tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service under the Pennsylvania Retail Pilot with Penn Power Energy, Inc., pursuant to the FirstEnergy System Open Access Tariff. This Service Agreement will enable the party to obtain Network Integration Service under the Pennsylvania Retail Pilot in accordance with the terms of the Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Co.

[Docket No. ER98–1479–000]

Take notice that on January 20, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 6, 1998, between KCPL and NESI Power Marketing, Inc. KCPL proposes an effective date of January 9, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888-A in Docket No. OA97–636.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER98–1480–000]

Take notice that on January 20, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (PSI), a First Supplemental Agreement, dated November 1, 1997, between Tennessee Power Company and Cinergy.

The First Supplemental Agreement revises the current language for rates, terms and conditions of service, provides for the unbundling language for the point of sale, adds language for reliability guidelines, interface capacity available and credit worthiness, and adds Market Based Power Service. The following Exhibit has also been revised:

B Power Sales by the Cinergy Operating Companies and Cinergy Services

Cinergy requests an effective date of one day after this First Supplemental Agreement of the Interchange Agreement.

Copies of the filing were served on Tennessee Power Company, the Tennessee Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER98–1481–000]

Take notice that on January 20, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff), entered into between Cinergy and the Board of Public Utilities of Kansas City (Kansas City).

Cinergy and Kansas City are requesting an effective date of one day after the filing of this Power Sales Service Agreement.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER98–1482–000]

Take notice that on January 20, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power authority to serve 16.9 MW of New York Power authority power to Occidental Chemicals. This Transmission Service Agreement specifies that the New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of May 23, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER98–1483–000]

Take notice that on January 20, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff), entered into between Cinergy and Allegheny Power (AP).

Cinergy and AP are requesting an effective date of one day after the filing of this Power Sales Service Agreement.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER98–1484–000]

Take notice that on January 20, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (PSI), a First Supplemental Agreement, dated November 1, 1997, between Citizens Power Sales and Cinergy.

The First Supplemental Agreement revises the current language for rates, terms and conditions of service, provides for the unbundling language for the point of sale, adds language for reliability guidelines, interface capacity available and credit worthiness, and adds Market Based Power Service. The following Exhibit has also been revised:

B Power Sales by the Cinergy Operating Companies and Cinergy Services

Cinergy requests an effective date of one day after this First Supplemental Agreement of the Interchange Agreement.

Copies of the filing were served on Citizens Power Sales, the Massachusetts Department of Public Utilities, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–1485–000]

Take notice that on January 20, 1998, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing an Informational Filing in compliance with Order No. 888. Wolverine proposes no change in rates.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Equinox Energy, LLC

[Docket No. ER98–1486–000]

Take notice that on January 20, 1998, Equinox Energy, LLC (Equinox), petitioned the Commission for acceptance of Equinox Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Equinox intends to engage in wholesale electric power and energy purchases and sales as a marketer. Equinox is not in the business of generating or transmitting electric power. Equinox is a Minnesota limited liability corporation with its principal place of business in Minneapolis, Minnesota. Equinox is commencing involvement in natural gas marketing and the marketing of electricity. Equinox is an independently owned entity that is located in the offices of Equinox Enterprises, Inc. Equinox Enterprises, Inc., is primarily engaged in the brokering and trading of agricultural commodities.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Commonwealth Electric Company and Cambridge Electric Light Company

[Docket No. ER98–1487–000]

Take notice that on January 20, 1998, Commonwealth Electric Company (Commonwealth), and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission their quarterly reports under Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9) for the period of October 1, 1997 to December 31, 1997.

Comment Date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Minnesota Power & Light Company

[Docket No. ER98–1488–000]

Take notice that on January 20, 1998, Minnesota Power & Light Company, tendered for filing signed Service Agreements for Non-Firm Point-to-Point and Short-term Point-to-Point Service with Griffin Energy Marketing, LLC under its Non-Firm and Short-Term Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Potomac Electric Power Company

[Docket No. ER98–1490–000]

Take notice that on January 20, 1998, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco's FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and Strategic Energy Limited, QST Energy Trading Incorporated, Energis Resources Incorporated, American Electric Power Service Corporation, and New Energy Ventures, L.L.C. An effective date of December 31, 1997, for these service agreements, with waiver of notice, is requested.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Louisville Gas and Electric Company

[Docket No. ER98–1491–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and City Water, Light and Power, Springfield, Illinois under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Louisville Gas and Electric Company

[Docket No. ER98–1492–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Aquila Power Corporation under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Louisville Gas and Electric Company

[Docket No. ER98–1493–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Engage Energy US, L.P., under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Niagara Mohawk Power Corporation

[Docket No. ER98–1494–000]

Take notice that on January 20, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and New Energy Ventures, L.L.C. This Transmission Service Agreement specifies that New Energy Ventures, L.L.C., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000]. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and New Energy Ventures, L.L.C., to enter into separately scheduled transactions under which NMPC will provide transmission service for New Energy Ventures, L.L.C., as the parties may mutually agree.

NMPC requests an effective date of February 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and New Energy Ventures, L.L.C.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Louisville Gas and Electric Company

[Docket No. ER98–1495–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Wabash Valley Power Association, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Louisville Gas and Electric Company

[Docket No. ER98–1496–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Southern Energy Trading and Marketing, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Louisville Gas and Electric Company

[Docket No. ER98–1497–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Wisconsin Electric Power Company under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Louisville Gas and Electric Company

[Docket No. ER98–1498–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and American Electric Power Corporation under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Minnesota Power & Light Company

[Docket No. ER98–1504–000]

Take notice that on January 21, 1998, Minnesota Power & Light Company (Minnesota Power), tendered for filing a Non-firm Point-to-Point Transmission Service Agreement and a Firm Point-to-Point Transmission Service Agreement together with Specifications for Long-Term Firm Point-to-Point Service (the Service Agreement), between Minnesota Power, as the transmission provider, and Minnesota Power, as the transmission customer, for service to the City of Hibbing. Minnesota Power requests that the Service Agreement be made effective sixty days from the date of filing.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Minnesota Power & Light Company

[Docket No. ER98–1505–000]

Take notice that on January 21, 1998, Minnesota Power & Light Company (MP), tendered for filing Supplement No. 5 to its Electric Service Agreement with the Public Utilities Commission of Grand Rapids, Minnesota (Grand Rapids). MP states that the amendment extends the term of the Agreement to December 31, 2004.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Virginia Electric and Power Company

[Docket No. ER98–1506–000]

Take notice that on January 21, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreements between Virginia Electric and Power Company and Tenaska Power Services Company and Virginia Electric and Power Company and New Energy Ventures, L.L.C., under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997, in Docket No. ER97–3561–001. Under the tendered Service Agreements, Virginia Power will provide services to Tenaska Power Services Company and New Energy Ventures, L.L.C., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of January 21, 1998, the date of filing the Service Agreements.

Copies of the filing were served upon Tenaska Power Services Company and New Energy Ventures, L.L.C., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Minnesota Power & Light Company

[Docket No. ER98–1507–000]

Take notice that on January 21, 1998, Minnesota Power & Light Company tendered for filing signed Service Agreements for Non-Firm and Umbrella Firm Point-to-Point Service with Tenaska Power Services Company under its Non-Firm and Short-Term Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Northeast Utilities Service Company

[Docket No. ER98–1508–000]

Take notice that on January 21, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Long Island Lighting Company, under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Long Island Lighting Company.

NUSCO requests that the Service Agreement become effective January 1, 1998.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. FirstEnergy System

[Docket No. ER98–1509–000]

Take notice that on January 21, 1998, FirstEnergy System filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Engage Energy US, L.P., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective date under this Service Agreement is January 1, 1998.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Wisconsin Public Service Corporation

[Docket No. ER98–1510–000]

Take notice that on January 21, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing executed agreements for service to the Village of Stratford Water & Electric Utility (Stratford), under WPSC's Market-Based Rate Tariff and Open Access Transmission Tariff, as well as a Network Operating Agreement and a Network Service Billing Agreement. WPSC requests that the Commission make the agreements effective on December 23, 1997.

WPSC states that copies of this filing have been served on Stratford, on the Michigan Public Service Commission and on the Public Service Commission of Wisconsin.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. New England Power Company

[Docket No. ER98–1511–000]

Take notice that on January 21, 1998, New England Power Company (NEP), filed a Service Agreement with Cinergy Capital & Trading Inc., for non-firm, point-to-point transmission service under NEP's open access transmission tariff, FERC Electric Tariff, Original Volume No. 9.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. FirstEnergy Corp., and Pennsylvania Power Company

[Docket No. ER98–1512–000]

Take notice that on January 21, 1998, FirstEnergy Corp., tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service under the Pennsylvania Retail Pilot with Allegheny Energy Solutions, Incorporated pursuant to the FirstEnergy System Open Access Tariff. This Service Agreement will enable the party to obtain Network Integration Service under the Pennsylvania Retail Pilot in accordance with the terms of the Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. New England Power Company

[Docket No. ER98–1513–000]

Take notice that on January 21, 1998, New England Power Company filed an amendment to one of its power contracts with Unitil Power Corp., the original of which contract is on file with and accepted by the Commission on Docket ER93–362–000.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Louisville Gas and Electric Company

[Docket No. ER98–1514–000]

Take notice that on January 21, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing a Notice of Cancellation of a Non-Firm Transmission Agreement between LG&E and Delhi Energy Services under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. Louisville Gas and Electric Company

[Docket No. ER98–1515–000]

Take notice that on January 21, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing a refund report for certain transactions made under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. Louisville Gas and Electric Company

[Docket No. ER98–1516–000]

Take notice that on January 21, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing a Notice of Cancellation of a Purchase Sales Agreement between LG&E and Delhi Energy Services under LG&E's Market-Based Rate Schedule GSS.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

44. SCANA Energy Marketing, Inc.

[Docket No. ER98–1517–000]

Take notice that on January 21, 1998, SCANA Energy Marketing, Inc. (SCANA), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP), indicating that SCANA application for membership in WSPP has been approved. SCANA requests that the Commission amend the WSPP Agreement to include it as a member.

SCANA requests an effective date of January 22, 1998, for the proposed amendment. Accordingly, SCANA requests waiver of the Commission's prior notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. PJM Interconnection, L.L.C.

[Docket No. ER98–1518–000]

Take notice that on January 21, 1998 the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership application of EnerZ Corporation. PJM requests an effective date on the day after this notice of filing is received by FERC.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

46. Niagara Mohawk Power Corporation

[Docket No. ER98–1519–000]

Take notice that on January 20, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and New Energy Ventures, L.L.C. This Transmission Service Agreement specifies that New Energy Ventures, L.L.C., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996,

will allow NMPC and New Energy Ventures, L.L.C., to enter into separately scheduled transactions under which NMPC will provide transmission service for New Energy Ventures, L.L.C., as the parties may mutually agree.

NMPC requests an effective date of March 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and New Energy Ventures, L.L.C.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

47. NUI Energy, Inc.

[Docket No. ER98–1520–000]

Take notice that on January 20, 1998, NUI Energy, Inc. (NUI Energy), tendered for filing, pursuant to Rule 205, 18 CFR 385.205, an application for authorization to make wholesale sales of electric power in interstate commerce at market-based rates; a request that the Commission accept and approve NUI Energy's Electric Rate Schedule FERC No. 1, to be effective on the earlier of the date of the Commission's order in this proceeding or March 21, 1998, and for such waivers and authorizations as have been customarily been granted to other power marketers, with the clarifications noted in its application.

NUI Energy is a corporation organized under the State of Delaware and has its principal place of business in Bedminister, New Jersey. NUI Energy is a wholly owned subsidiary of NUI Capital Corporation which in turn is a wholly owned subsidiary of NUI Corporation, a publicly traded corporation which owns natural gas distribution facilities in six states. Neither NUI Energy, nor its affiliates, own, operate, or control any electric generation, transmission, or distribution facilities. Furthermore, neither NUI Energy, nor its affiliates, hold a franchise for the transmission, distribution, or sale of electric power, or own or control any other barriers to entry to the electric power market.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

48. Consumers Energy Company

[Docket No. ER98–1521–000]

Take notice that on January 22, 1998, Consumers Energy Company (Consumers), tendered for filing executed service agreements for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996, by Consumers and The Detroit Edison Company (Detroit Edison), with the following transmission customer, Consumers Energy Company—Electric Sourcing & Trading.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison and the transmission customer.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

49. Cambridge Electric Light Company

[Docket No. ER98–1522–000]

Take notice that on January 21, 1998, Cambridge Electric Light Company (Cambridge), tendered for filing with the Federal Energy Regulatory Commission a Supplemental Filing containing clarifications to the Net Requirements Power Supply Agreement (Agreement), Appendix B formula rate in compliance with the Commission's Order issued on June 18, 1993 in Docket No. ER93–433–000.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

50. Narragansett Electric Company

[Docket No. ER98–1523–000]

Take notice that on January 22, 1998, Narragansett Electric Company tendered for filing rate changes to its FERC Electric Tariff, Original Volume No. 1, for borderline sales.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

51. Virginia Electric and Power Company

[Docket No. ER98–1525–000]

Take notice that on January 22, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Firm Point-to-Point Transmission Service with North American Energy Conservation, Inc. (NAEC), and Tennessee Valley Authority under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon North American Energy Conservation, Inc. (NAEC), and Tennessee Valley Authority, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

52. Indeck Pepperell Power Associates Inc.

[Docket No. ER98–1526–000]

Take notice that on January 21, 1998, Indeck Pepperell Power Associates, Inc., tendered for filing a summary of activity for the quarter ending December 31, 1997.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

53. Carolina Power & Light Company

[Docket No. ER98–1528–000]

Take notice that on January 22, 1998, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Network Integration Transmission Service executed between CP&L and the following Eligible Transmission Customers Town of Stantonsburg, NC, Town of Black Creek, NC, and the Town of Lucama, NC. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

54. PacifiCorp

[Docket No. ER98–1529–000]

Take notice that on January 22, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Regulations, Non-Firm and Short-Term Firm Point-To-Point Transmission Service Agreements with Colorado Springs Utilities under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

55. PacifiCorp

[Docket No. ER98–1530–000]

Take notice that PacifiCorp on January 22, 1998, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Filing of a Mutual Netting/Closeout Agreement (Netting Agreement) between PacifiCorp and

Vitol Gas and Electric LLC (Vitol). PacifiCorp has requested that the Commission rule that the Netting Agreement is not subject to the Commission's jurisdiction.

Copies of this filing were supplied to Delhi Energy Services, Inc., the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

56. Washington Water Power

[Docket No. ER98–1531–000]

Take notice that on January 22, 1998, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed a Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with Mock Energy Services, L.P. (formerly known as Mock Resources, Inc.), which replaces an unexecuted service agreement previously filed with the Commission under Docket No. ER97–1252–000, Service Agreement No. 84, effective December 15, 1996.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

57. San Diego Gas & Electric Company

[Docket No. ER98–1533–000]

Take notice that on January 22, 1998, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, a Service Agreement (Service Agreement), with Enron Power Marketing, Inc., for Point-To-Point Transmission Service under SDG&E's Open Access Transmission Tariff (Tariff), filed in compliance with FERC Order No. 888-A.

SDG&E filed the executed Service Agreement with the Commission in compliance with applicable Commission Regulations. SDG&E also provided Sheet No. 114 (Attachment E) to the Tariff, which is a list of current subscribers. SDG&E requests waiver of the Commissions notice requirement to permit an effective date of January 2, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

58. Entergy Services, Inc.

[Docket No. ER98–1534–000]

Take notice that on January 22, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Columbia Power Marketing Corporation.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

59. Entergy Services, Inc.

[Docket No. ER98–1535–000]

Take notice that on January 22, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Columbia Power Marketing Corporation.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

60. Florida Power & Light Company

[Docket No. ER98–1536–000]

Take notice that on January 23, 1998, Florida Power & Light Company (FPL), proposed to terminate the following agreements, (1) The Contract for Interchange Service between FPL and Ft. Pierce Utilities Authority, (2) the Non-Firm Service Agreement between FPL and Ft. Pierce Utilities Authority, and (3) the Short Term Transmission Service Agreement between FPL and the Ft. Pierce Utilities Authority. The Ft. Pierce Utilities Authority will take service under Amendment Number four to the Network Service Agreement between FPL and FMPA to be effective January 12, 1998. FPL proposes to make the termination effective January 12, 1998.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

61. Northern Indiana Public Service Company

[Docket No. ER98–1537–00]

Take notice that on January 23, 1998, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and DTE Energy Trading, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to DTE Energy Trading, Inc., pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service company will provide general purpose energy and negotiated capacity to DTE Energy Trading pursuant to the Wholesale Sales Tariff field by Northern Indiana Public Service company in Docket No. ER95–1222–000 as amended by the Commission's Order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of January 31, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

62. Illinois Power Company

[Docket No. ER98–1538–000]

Take notice that on January 23, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which DTE Energy Trading 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 January 15, 1998.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

63. Houston Lighting & Power Company

[Docket No. ER98–1539–000]

Take notice that on January 23, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA), with (1) Coral Power, L.L.C. (Coral); (2) Electric Clearinghouse, Inc. (ECI); (3) Aquila Power Corporation (Aquila), and (4) Vitol Gas & Electric L.L.C. (Vitol), for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has

requested an effective date of January 23, 1998.

Copies of the filing were served on Coral, ECI, Aquila and Vitol and the Public Utility Commission of Texas.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

64. Louisville Gas and Electric Company

[Docket No. ER98–1540–000]

Take notice that on January 23, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Tennessee Valley Authority (TVA), under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

65. Louisville Gas and Electric and Gas Company

[Docket No. ER98–1541–000]

Take notice that on January 23, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Service Agreement between LG&E and Allegheny Power under LG&E's Rate Schedule GSS.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

66. Public Service Electric and Gas Company

[Docket No. ER98–1542–000]

Take notice that Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey on January 23, 1998, tendered for filing an agreement for the sale of capacity and energy to Strategic Energy LTD. (SEL), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 29, 1997.

Copies of the filing have been served upon SEL and the New Jersey Board of Public Utilities.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

67. Public Service Electric and Gas Company

[Docket No. ER98–1543–000]

Take notice that Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey on January 23, 1998, tendered for filing an agreement for the sale of capacity and energy to the Borough of South River, New Jersey (South River), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 29, 1997.

Copies of the filing have been served upon South River and the New Jersey Board of Public Utilities.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

68. Public Service Electric and Gas Company

[Docket No. ER98–1544–000]

Take notice that on January 23, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to the Borough of Milltown, New Jersey (Milltown), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 29, 1997.

Copies of the filing have been served upon Milltown and the New Jersey Board of Public Utilities.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

69. Public Service Electric and Gas Company

[Docket No. ER98–1545–000]

Take notice that on January 23, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Columbia Power Marketing Corporation (Columbia), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 29, 1997.

Copies of the filing have been served upon Columbia and the New Jersey Board of Public Utilities.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

70. Public Service Electric and Gas Company

[Docket No. ER98–1546–000]

Take notice that on January 23, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to South Jersey Energy Company (SJEC), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 29, 1997.

Copies of the filing have been served upon SJEC and the New Jersey Board of Public Utilities.

Comment date; February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

71. Central Illinois Light Company

[Docket No. ER98–1548–000]

Take notice that Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, on January 23, 1998, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for two new customers, Commonwealth Edison Company and Tenaska Power Services Company.

CILCO requested an effective date of January 1, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

72. Dayton Power & Light Company

[Docket No. ER98–1549–000]

Take notice that on January 23, 1998, Dayton Power & Light Company (Dayton), submitted short-term firm transmission service agreements establishing Aquila Power Corporation as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Aquila Power Corporation and the Public Utilities Commission of Ohio.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

73. Dayton Power & Light Company

[Docket No. ER98–1550–000]

Take notice that on January 23, 1998, Dayton Power & Light Company (Dayton), submitted service agreements establishing Aquila Power Corporation

as a customer under the terms of Dayton's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

74. Southern California Edison Company

[Docket No. OA97–445–002]

Take notice that on February 2, 1998, Southern California Edison Company (SoCal Ed), submitted revised standards of conduct under Order Nos. 889 *et seq.*[1] SoCal Ed states that it is revising its standards to incorporate the changes required by the Commission's December 18, 1997, Order on Standards of Conduct.[2]

SoCal Ed states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Comment date: February 20, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3551 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–P

[1] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats, & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, *order on rehearing,* 62 FR 12484 (March 14, 1997), III FERC, Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied,* 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

[2] Allegheny Power Service Corporation, *et al.,* 81 FERC ¶ 61,339 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1473–013–MT]

Granite County, MT; Notice of Availability of Environmental Assessment

February 6, 1998.

An environmental assessment (EA) is available for public review. The EA is for an application to surrender the license for the Flint Creek Project, located on Flint Creek near the town of Philipsburg, in Granite and Deer Lodge Counties, Montana.

The EA evaluates the environmental impacts that would result from the continued operation of the Flint Creek Dam and Georgetown Lake, and the retention of all existing hydropower facilities at the site. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, DC 20426. Copies also may be obtained by calling the project manager, Regina Saizan, at (202) 219–2673.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3524 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis

February 6, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* 11060–000.

c. *Date Filed:* December 13, 1993.

d. *Applicant:* J.M. Miller Enterprises.

e. *Name of Project:* Sahko Hydroelectric Project.

f. *Location:* On the Kastelu Drain, Twin Falls County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* D.W. ''Bill'' Block, P.E., J–U–B Engineers, Inc., 800 Falls Ave., Twin Falls, Idaho 83301, (208) 622–7215.

i. *FERC Contact:* Nan S. Allen, 202–219–2938, or E-mail at nan.alllen@ferc.fed.us.

j. *Deadline for comments, recommendations, terms and conditions, and prescriptions:* See attached paragraph.

k. *Status of Environmental Analysis:* The application is now ready for environmental analysis—see attached paragraph D10.

l. *Brief Description of Project:* The proposed project would consist of: (1) an 11-foot-long, 13.5-foot-high, earth-fill embankment, impounding a 3-acre-foot forebay; (2) an 8.0-foot-wide, 10.0-foot-long, 10.5-foot-deep concrete intake structure with protective trash racks; (3) an 80-foot-long, 9.5-foot-high, earth-fill embankment, impounding a 4-acre-foot sediment collection pond; (4) a 24-inch-diameter 1,950-foot-long, steel penstock; (5) a 25-foot-wide, 50 foot-long, masonry-block powerhouse, with an installed capacity of 500 kilowatts; (6) a 6-foot-wide, 30-foot-long, 3-foot deep, rock-lined tailrace; (7) a 34.5-kilovolt, 2,000-foot-long transmission line; and (8) related appurtenances.

m. This notice also consists of the following standard paragraphs: A4 and D10.

n. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at: 888 First St., N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the

Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicants. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3522 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

February 6, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 6896–051.

c. *Date filed:* December 29, 1997.

d. *Applicants:* Energy Growth Group, Butte Creek Improvement Company, Energy Growth Partnership I, and Hypower, Inc.

e. *Name of Project:* Forks of Butte.

f. *Location:* On Butte Creek in Butte County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants Contact:* Philip M. Hoover, Project Manager, H&M Engineering, Inc., 8827 Columbia 100 Parkway, Suite 1, Columbia, Maryland 21045, (410) 730–7930.

i. *FERC Contact:* Thomas F. Papsidero, (202) 219–2715.

j. *Comment Date:* March 23, 1998.

k. *Description of Filing:* Application to transfer the license for the Forks of Butte Project to Hypower, Inc.

l. This notice also consists of the following standard paragraphs: B, C1 & D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3525 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5942–2]

National Emission Standards for Hazardous Air Pollutants; Revision of List of Categories of Sources and Schedule for Standards Under Section 112 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revisions to list of categories of major and area sources, and revisions to promulgation schedule for standards.

SUMMARY: This notice publishes revisions made or which have been proposed to the list of categories of sources of hazardous air pollutants (HAP) and the corresponding schedule for the promulgation of emission standards. Required under Sections 112 (c) and (e) of the Clean Air Act, the source category list and the schedule for standards constitute a significant part of the EPA's agenda for regulating stationary sources of air toxics emissions. The ''list'' and ''schedule'' were most recently published in the **Federal Register** on June 4, 1996 (61 FR 28197).

Today's notice meets the requirement in Section 112(c)(1) to publish from time to time a list of all categories of sources, reflecting revisions since the list was published. Several of the revisions identified in today's notice have already been published in actions associated with listing and promulgating emission standards for individual source categories, and public comment has already been taken in the context of those actions. Some of the revisions in today's notice have not been reflected in any previous notices, and are being made without public comment on the Administrator's own motion. Such revisions are deemed by EPA to be without need for public comment, based on the nature of the actions. Other revisions have been only proposed as of today's date, but are reflected nevertheless to be inclusive of all list and schedule actions of probable interest to the reader.

EFFECTIVE DATE: February 12, 1998.

ADDRESSES: Relevant information can be found in the **Federal Register** notices cited below in the **SUPPLEMENTARY INFORMATION** section of this notice.

Docket: Docket No. A–90–49, containing supporting information used in development of this notice, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. The docket is located in the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M–1500, 401 M Street, SW, Washington, D.C. 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. David Svendsgaard, Emissions Standards Division (MD–13), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2380, facsimile number (919) 541–3470, electronic mail address ''svendsgaard.dave@epamail.epa.gov''.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act Amendments of 1990 (Pub. L. 101–549) require, under the revisions to Section 112, that the Agency list categories of sources emitting HAP and promulgate national emission standards for hazardous air pollutants (NESHAP) in order to control, reduce, or otherwise limit the emissions of HAP from such categories of major and area sources. Pursuant to the various specific listing requirements in Section 112(c), the Agency published on July 16, 1992 (57 FR 31576) a list of 174 categories of major and area sources—referred to as the ''initial list''—that would be henceforth subject to emission standards. Following this listing, pursuant to requirements in Section 112(e), on December 3, 1993 (58 FR 63941) the Agency published a schedule for the promulgation of emission standards for each of the 174 listed source categories. The schedule for standards organized the source categories into groups of four separate timeframes with promulgation deadlines of November 15, 1992, November 15, 1994, November 15, 1997, or November 15, 2000. The reader is directed to these two notices for information relating to development of the initial list and schedule.

Following these publications, several list and schedule actions were effected through publication of specific **Federal Register** notices. For example, on November 12, 1993 (58 FR 60021), the Agency listed marine vessel loading operations as a category of major sources, with standards to be promulgated, pursuant to Section 112(c)(5), by the year 2000. As another example, on September 8, 1994 (59 FR 46339), the Agency promulgated standards for HAP emissions for industrial process cooling towers. This latter action did not revise the list or schedule, per se, but specifically delineated rule applicability by defining the affected sources within the listed category. The Agency believes that defining rule applicability and affected sources as part of standard setting constitutes an important aspect of list revision. As was stated in the initial list notice (57 FR 31576):

> the Agency recognizes that these descriptions [in the initial list], like the list itself, may be revised from time to time as better information becomes available. The Agency intends to revise these descriptions as part of the process of establishing standards for each category. Ultimately, a definition of each listed category, or subsequently listed subcategories, will be incorporated in each rule establishing a NESHAP for a category

As more notices were published that effected actions relating to individual source categories, it became important to examine the resultant change on the list and schedule. On June 4, 1996 (61 FR 28197), the EPA published a notice that referenced all previous listing and schedule changes and consolidated those actions, along with several new actions, into a revised source category list and schedule. A subsequent notice was published on July 18, 1996 (61 FR 37542) which corrected typographical errors in the June 4 notice.

Section 112(e)(4) states that, notwithstanding Section 307 of the Act, no action of the Administrator listing a source category or subcategory under Section 112(c) shall be a final Agency action subject to judicial review, except that any such action may be reviewed under Section 307 when the Administrator issues emission standards for such pollutant or category. Therefore, today's list is not a final Agency action and is not subject to judicial review.

Prior to issuance of the initial source category list, the EPA published a draft initial list for public comment (56 FR 28548; June 21, 1991). Although the EPA was not required to take public comment on the initial source category list, it believed it was useful to solicit input on a number of issues related to the list. Indeed, in most instances, even where there is no statutory requirement to take comment, EPA solicits public comment on actions it is contemplating. The EPA has, however, decided that it is unnecessary to solicit additional public comment on the revisions reflected in today's notice because interested parties have already had, or will have in the future, the opportunity to provide comments on many of the revisions in the context of individual actions relating to proposing and promulgating emissions standards.

II. Description of Individual List and Schedule Revisions

The revised source category list and regulatory schedule, reflecting all actions up to today's date, are presented in Table 1. This table incorporates the entire listing of source categories listed to this date, including those listed on the initial list as well as those listed subsequently either through a specific **Federal Register** notice or the June 4, 1996 revision notice. Table 1 also includes the updated schedule for establishing emission standards under Section 112 for the listed categories, including rule proposal or promulgation **Federal Register** citations (Table 1 omits proposal notices once a rule has been promulgated). Table 1 is formatted so that the reader can at once see all categories of major and area sources that have been listed to date, the associated schedule for standards and rulemaking notices, and any revisions effected by or reflected in today's notice. Source categories and/or schedules for standards in Table 1 that are revised from the previous listing notices are marked (i.e., as revisions ''as of Today'') for ease in discerning where revisions have been made.

The following sections describe the actions that are being effected by or reflected in this notice that are new since the June 4, 1996 publication.

A. Addition of Categories of Sources

The Administrator is obligated to list any category of major sources. Section 112(a) defines ''major'' source as any stationary source or group of stationary sources, emitting or having the potential to emit, considering controls, 10 tons per year of one HAP or 25 tons per year of two or more HAP.

Today's notice reflects the February 6, 1998 listing (63 FR 8288) of a new category of major sources, Natural Gas Transmission and Storage. This new source category is a result of dividing the initially listed Oil and Natural Gas Production major source category into two separate major source categories. Thus, the Oil and Natural Gas Production source category remains on the list of categories, but part of its original applicability is being covered by the new Natural Gas Transmission

and Storage source category. Since this new category is a subset of an originally listed major source category, it is not subject to the scheduling requirements of Section 112(c)(5); but rather, is subject to the November 15, 1997 deadline originally set for the Oil and Natural Gas Production source category. The reader is referred to the above cited **Federal Register** notice for more information concerning the proposed rule applicability of these two source categories.

An ''area'' source is a stationary source of HAP that is not a major source. The Agency may list and regulate categories of area sources pursuant to a number of authorities in Section 112. The authorities are all discretionary and/or require some sort of finding or determination by the Administrator. The Agency believes that any such area source listing action should therefore be subject to public comment and is consequently not being taken in today's notice.

However, the February 6, 1998 action described above, which divides the ''Oil and Natural Gas Production'' category into two major source categories, also proposed to add two area source categories to the list as part of that regulatory action. Since final action has not yet been taken on the proposal to list these two area source categories, the list of categories in today's notice does not reflect the addition of these two source categories. If final action is taken to add these area source categories to the list, that action will be reflected in future consolidated list publications.

The reader is also referred to a June 20, 1997 notice (62 FR 33625) that proposes the listing of three source categories, pursuant to the requirements of Section 112(c)(6). Once listed, these source categories will be subject to emission standards under Section 112(d)(2) and (4) of the Act.

B. Delineation of Standard Applicability and Affected Sources Through Standard Promulgation

Emission standards have been promulgated under Section 112 for several source categories since the source category list and schedule were last published. Table 1 identifies the **Federal Register** cite for each of these notices. These actions are cited in today's notice because they revise the list in that they delineate rule applicability by defining the affected sources within the listed category.

C. Proposed Delineation of Standard Applicability and Affected Sources Through Standard Proposal

Emission standards have been proposed under Section 112 for several source categories since the source category list and schedule were last published. These actions are cited in today's notice as they propose to revise the list by delineating rule applicability by defining the affected sources within the listed category. The reader is referred to Table 1 to obtain the **Federal Register** citations for these categories of sources.

D. Subsumption of Listed Source Categories Into Other Listed Source Categories

Today's notice specifies one action involving subsumption of two previously listed source categories into a single source category. The Hydrogen Cyanide Production and Sodium Cyanide Production source categories will be combined into a new major source category, called Cyanide Chemicals Manufacturing. Since facilities produce sodium cyanide and hydrogen cyanide in the same process train (i.e., using the same or linked equipment), it is more sensible to have facilities subject to only one rule rather than two separate rules for different parts of their process. As a result, two source categories are aggregated into one category without compromising the intent of the original source category listing notice.

The reader is also referred to a November 7, 1996 notice (61 FR 57602) to learn about an anticipated listing action involving the subsumption of a number of source categories into one source category, called the Miscellaneous Organic Chemical Processes source category. Each of the anticipated subsumed categories are scheduled for standards promulgation no later than November 15, 2000; thus, the new source category would be also scheduled for that regulatory timeframe.

The reader is also referred to a November 10, 1997 notice (62 FR 60566) which proposes subsumption of the eleven categories listed in the Agricultural Chemicals Industry Group into one combined source category, Pesticides Active Ingredients Production. The Pesticides Active Ingredient source category is scheduled for standards promulgation by November 15, 1997.

E. Deletion of Categories of Sources

The Administrator may delete categories of sources on the Administrator's own motion or on petition. One source category—Nylon 6 Production—which was previously determined to be a major source category is being deleted from the list on the Administrator's own motion in today's notice. A second category—Cyanuric Chloride Production—is being deleted on the Administrator's own motion because no major source produces cyanuric chloride as a product. Today's notice contains no deletions of categories as a result of petition.

The reason for deleting Nylon 6 Production is that available data indicate that the category contains no major sources. Specifically, the only pollutant which has ever been considered a HAP that is emitted by the Nylon 6 production process is caprolactam. On June 18, 1996 (61 FR 30816), the Agency removed caprolactam from the Section 112(b)(1) list of HAP. Consequently, this category emits no HAP and is therefore removed from the list of source categories.

The reason Cyanuric Chloride Production is being deleted is that the EPA has determined that cyanuric chloride is an unstable intermediate product and as such does not exist as a production category. Therefore, it was erroneously included on the initial list of source categories.

This section does not include categories of sources which are being deleted from the list by way of subsumption into other listed categories. See Section II.D of this notice for information on these categories.

In the near future EPA expects to publish a notice announcing its intent to regulate certain solid waste incineration units under Section 129 of the Act rather than Section 112. Currently, the Section 112 source category list includes some solid waste incineration units. The source category list and schedule will be updated following finalization of any such change. Sources expressly excluded from regulation under Section 129(g)(1) will remain on the Section 112 list.

F. Moving Standards Promulgation Deadlines for Source Categories

The Agency may revise the regulatory schedule for standards associated with a listed source category, heeding the limitations in Section 112. As was stated in the notice issuing the schedule for standards (58 FR 63941; December 3, 1993), ''* * * as new information comes available, the EPA may identify changes to the schedule that would facilitate greater achievement of the prioritizing criteria of section 112(e).''

The December 3, 1993, notice scheduled the initially listed source

categories for regulation such that exactly 50 percent (87 out of 174) were scheduled by November 15, 1997. Consequently, in order to continue to satisfy the numerical and temporal requirements of Section 112(e)(1), any change to occur that would delay the deadline for a source category scheduled for regulation by November 15, 1997, must be offset by a corresponding shifting of a source category from the November 15, 2000, regulatory timeframe forward to the November 15, 1997, timeframe.

Today's notice effects three actions (affecting seven source categories) whereby circumstances support a change to the schedule for standards.

1. Reinforced Plastic Composites Production and Phosphate Fertilizers Production

Reinforced Plastic Composites Production is delayed from November 15, 1997, to November 15, 2000, following the determination that its regulatory development should be conducted in parallel with that of the Boat Manufacturing source category, which is scheduled for standards promulgation by November 15, 2000. Correspondingly, the regulatory schedule for the Phosphate Fertilizers Production is moved up in time, from November 15, 2000, to November 15, 1997.

The change of schedule for Reinforced Plastic Composites Production will promote consistency with the development of the Boat Manufacturing NESHAP. The applicability and recordkeeping/reporting requirements for these standards needs to be coordinated due to an overlap in the coverage of the source categories. In addition, moving back the Reinforced Plastic Composites Production regulatory timeframe allows the EPA the time it needs to carry out additional data gathering to develop the rule. Specifically, the EPA is planning a source test program to provide data needed for one of the subcategories of Reinforced Plastic Composites Production.

Because the standard for the Phosphate Fertilizers Production Category is already proposed (61 FR 68430), it will be far ahead of its initial regulatory deadline and therefore can be used in place of the Reinforced Plastic Composites Production category in order to meet the statutory requirement of completion of 50 percent of the initially listed source categories by November 15, 1997.

2. Chlorine Production and Phosphoric Acid Manufacturing

This notice also announces the change of schedules for the source categories of Chlorine Production and Phosphoric Acid Manufacturing. The schedule for Chlorine Production, which was included in the initial source category schedule in December 1993, is being changed from November 15, 1997, to November 15, 2000. The schedule for Phosphoric Acid Manufacturing, published in that same notice (58 FR 63941; December 3, 1993), is being changed from November 15, 2000, to November 15, 1997.

Moving Chlorine Production to the 10-year bin would allow the EPA the time it needs to carry out additional data gathering to develop the proposal. Specifically, the Chlorine Institute and its US based mercury cell chlor-alkali producers are voluntarily committed to attaining a 50 percent reduction in the deliberate use and release of mercury from US based chlor-alkali facilities by the year 2005. Given the timing of these future actions, the Agency has determined that moving Chlorine Production into the 10-year bin is prudent to avoid requirements that are incompatible with the voluntary reductions.

Because the standard for the Phosphoric Acid Manufacturing category has already been proposed, it will be far ahead of its 2000 deadline and therefore can be used to meet the statutory requirement to complete regulation of half the original source category list in 7 years.

3. Cyanide Chemicals Manufacturing, Marine Vessel Loading Operations, and Secondary Lead Smelting (Area Source Category)

This notice also announces a change of schedule for the newly designated Cyanide Chemicals Manufacturing category and the Secondary Lead Smelting area source category and the Marine Vessel Loading Operations category. As noted above, the Hydrogen Cyanide Production category and the Sodium Cyanide Production category (which have now been combined into the Cyanide Chemicals Manufacturing category) were scheduled for regulation by November 15, 1997. The Secondary Lead Smelting area source category and the Marine Vessel Loading Operations major source category were added after publication of the initial source category list, and therefore scheduled for regulation by November 15, 2000, pursuant to Section 112(c)(5) of the Act. Moving forward the regulatory deadlines for these two regulated categories in exchange for the Cyanide Chemicals Manufacturing category constitutes an equal trade of two categories previously scheduled for November 1997 with two categories previously scheduled for November 2000. Consequently, the requirement to regulate 50 percent of the initially listed categories by November 15, 1997, is preserved.

G. Descriptions of Categories of Sources

For general descriptions of source categories listed in Table 1, the reader is referred to Docket No. A–90–49, Item No. IV–A–55 (EPA–450/3–91–030, entitled ''Documentation for Developing the Initial Source Category List''), and the **Federal Register** notice for the first revision of the source category list and schedule (61 FR 28197; June 4, 1996). For subsequent changes to descriptions of source categories for which a rule has been promulgated, the reader is advised to consult Table 1 for the citation of the **Federal Register** notice which will include the amended definition and corresponding rule applicability.

III. Administrative Requirements

A. Docket

The docket for this regulatory action is A–90–49. The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this revised list of categories of sources and revised schedule for standards. The principal purpose of this docket is to allow interested parties to identify and locate documents that serve as a record of the process engaged in by the Agency to publish today's revision to the initial list and schedule. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, which is listed in the **ADDRESSES** section of this notice.

B. Regulatory Requirements

1. General

Today's notice is not a rule; it is essentially an information sharing activity which does not impose regulatory requirements or costs. Therefore, the EPA has not prepared an assessment of the potential costs and benefits pursuant to Executive Order 12866, nor an economic impact analysis pursuant to Section 317, nor a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980), nor a budgetary impact statement pursuant to the Unfunded Mandates Act of 1995. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the

Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

2. Executive Order 12866 and Office of Management and Budget (OMB) Review

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether a 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 either (1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been decided that this is a ''significant regulatory action'' within the meaning of the Executive Order. For this reason, this action underwent review by the OMB.

Dated: December 17, 1997.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
Fuel combustion:	
Engine Test Facilities	11/15/2000.
Industrial Boilers [c]	11/15/2000.
Institutional/Commercial Boilers [c]	11/15/2000.
Process Heaters	11/15/2000.
Stationary Internal Combustion Engines [c]	11/15/2000.
Stationary Turbines [c]	11/15/2000.
Non-ferrous metals processing:	
Lead Acid Battery Manufacturing	Deleted. 61 FR 28197.
Primary Aluminum Production	11/15/1997. 62 FR 52383(F).
Primary Copper Smelting	11/15/1997.
Primary Lead Smelting	11/15/1997.
Primary Magnesium Refining	11/15/2000.
Secondary Aluminum Production	11/15/1997.
Secondary Lead Smelting	11/15/1994. 60 FR 32587(F). 60 FR 64002(a). 61 FR 27785(A). 61 FR 65334(A). 62 FR 32209(A). 62 FR 32266(a).
Ferrous metals processing:	
Coke By-Product Plants	11/15/2000.
Coke Ovens: Charging, Top Side, and Door Leaks	12/31/1992. 58 FR 57898(F). 59 FR 01922(C).
Coke Ovens: Pushing, Quenching, and Battery Stacks	11/15/2000.
Ferroalloys Production	11/15/1997.
Integrated Iron and Steel Manufacturing	11/15/2000.
Iron Foundries	11/15/2000.
Non-Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	Deleted. 61 FR 28197.
Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	Deleted. 61 FR 28197.
Steel Foundries	11/15/2000.
Steel Pickling—HCl Process	11/15/1997. 62 FR 49052(P)
Mineral products processing:	
Alumina Processing	11/15/2000.
Asphalt Concrete Manufacturing	11/15/2000.
Asphalt Processing	11/15/2000.
Asphalt Roofing Manufacturing	11/15/2000.
Asphalt/Coal Tar Application—Metal Pipes	11/15/2000.
Chromium Refractories Production	11/15/2000.
Clay Products Manufacturing	11/15/2000.
Lime Manufacturing	11/15/2000.
Mineral Wool Production	11/15/1997. 62 FR 25370(P).
Portland Cement Manufacturing	11/15/1997.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
Taconite Iron Ore Processing	11/15/2000.
Wool Fiberglass Manufacturing	11/15/1997. 62 FR 15228(P).
Petroleum and natural gas production and refining:	
Oil and Natural Gas Production	11/15/1997. 63 FR 8288(P).
Natural Gas Transmission and Storage	11/15/1997. 63 FR 8288(P).
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units	11/15/97.
Petroleum Refineries—Other Sources Not Distinctly Listed	11/15/1994. 60 FR 43244(F). 61 FR 7051(C). 61 FR 29876(C). 62 FR 7937(A). 62 FR 7977(a).
Liquids distribution:	
Gasoline Distribution (Stage 1)	11/15/1994. 59 FR 64303(F). 60 FR 7627(C). 60 FR 32912(C). 60 FR 43244(A). 60 FR 56133(a). 60 FR 57628(C). 60 FR 62991(S). 61 FR 7718(A). 62 FR 9087(A). 62 FR 9140(a).
Marine Vessel Loading Operations	11/15/1997. 60 FR 48399(F).
Organic Liquids Distribution (Non-Gasoline)	11/15/2000.
Surface coating processes:	
Aerospace Industries	11/15/1994. 60 FR 45948(F). 61 FR 4902(C). 61 FR 55842(a). 61 FR 66226(C).
Auto and Light Duty Truck (Surface Coating)	11/15/2000.
Flat Wood Paneling (Surface Coating)	11/15/2000.
Large Appliance (Surface Coating)	11/15/2000.
Magnetic Tapes (Surface Coating)	11/15/1994. 59 FR 64580(F).
Manufacture of Paints, Coatings, and Adhesives	11/15/2000.
Metal Can (Surface Coating)	11/15/2000.
Metal Coil (Surface Coating)	11/15/2000.
Metal Furniture (Surface Coating)	11/15/2000.
Miscellaneous Metal Parts and Products (Surface Coating)	11/15/2000.
Paper and Other Webs (Surface Coating)	11/15/2000.
Plastic Parts and Products (Surface Coating)	11/15/2000.
Printing, Coating, and Dyeing of Fabrics	11/15/2000.
Printing/Publishing (Surface Coating)	11/15/1994. 61 FR 27132(F).
Shipbuilding and Ship Repair (Surface Coating)	11/15/1994. 60 FR 64330(F). 61 FR 30814(A). 61 FR 30846(a). 61 FR 66226(C).
Wood Furniture (Surface Coating)	11/15/1994. 60 FR 62930(F). 62 FR 30257(C). 62 FR 31361(A). 62 FR 31405(a).
Waste treatment and disposal:	
Hazardous Waste Incineration	11/15/2000.
Municipal Landfills	11/15/2000.
Off-Site Waste and Recovery Operations	11/15/1994. 61 FR 34141(F).
Publicly Owned Treatment Works (POTW) Emissions [d]	11/15/95.
Sewage Sludge Incineration	11/15/2000.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
Site Remediation	11/15/2000.
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)	Renamed. 59 FR 51913.
Agricultural chemicals production:	
4-Chloro-2-Methylphenoxyacetic Acid Production	11/15/1997. 62 FR 60566(P).
2,4–D Salts and Esters Production	11/15/1997. 62 FR 60566(P).
4,6–Dinitro-o-Cresol Production	11/15/1997. 62 FR 60566(P).
Butadiene-Furfural Cotrimer (R–11) Production [e]	11/15/2000. 62 FR 60566(P).
Captafol Production [e]	11/15/1997. 62 FR 60566(P).
Captan Production [e]	11/15/1997. 62 FR 60566(P).
Chloroneb Production	11/15/1997. 62 FR 60566(P).
Chlorothalonil Production [e]	11/15/1997. 62 FR 60566 (P).
Dacthal (tm) Production [e]	11/15/1997. 62 FR 60566 (P).
Sodium Pentachlorophenate Production	11/15/1997. 62 FR 60566 (P).
Tordon (tm) Acid Production [e]	11/15/1997. 62 FR 60566 (P)
Fibers production processes:	
Acrylic Fibers/Modacrylic Fibers Production	11/15/1997.
Rayon Production	11/15/2000.
Spandex Production	11/15/2000.
Food and agriculture processes:	
Baker's Yeast Manufacturing	11/15/2000.
Cellulose Food Casing Manufacturing	11/15/2000.
Vegetable Oil Production	11/15/2000
Pharmaceutical production processes:	
Pharmaceuticals Production [e]	11/15/1997. 62 FR 15754 (P)
Polymers and resins production:	
Acetal Resins Production	11/15/1997.
Acrylonitrile-Butadiene-Styrene Production	11/15/1994. 61 FR 48208 (F). 61 FR 54342 (C). 61 FR 59849 (N). 62 FR 01835 (A). 62 FR 01869 (a). 62 FR 37720 (A).
Alkyd Resins Production	11/15/2000.
Amino Resins Production	11/15/1997.
Boat Manufacturing	11/15/2000.
Butadiene Furfural Cotrimer (R–11) Production	Moved. 61 FR 28197.
Butyl Rubber Production	11/15/1994. 61 FR 46906 (F). 61 FR 59849 (N). 62 FR 01835 (A). 62 FR 01869 (a). 62 FR 12546 (N). 62 FR 37720 (A).
Carboxymethylcellulose Production	11/15/2000.
Cellophane Production	11/15/2000.
Cellulose Ethers Production	11/15/2000.
Epichlorohydrin Elastomers Production	11/15/1994. 61 FR 46906 (F). 61 FR 59849 (N). 62 FR 01835 (A). 62 FR 01869 (a). 62 FR 12546 (N). 62 FR 37720 (A).

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
Epoxy Resins Production	11/15/1994. 60 FR 12670 (F).
Ethylene-Propylene Rubber Production	11/15/1994. 61 FR 46906 (F). 61 FR 59849 (N). 62 FR 01835 (A). 62 FR 01869 (a). 62 FR 12546 (N). 62 FR 37720 (A).
Flexible Polyurethane Foam Production	11/15/1997. 61 FR 68406 (P). 62 FR 05074 (C).
Hypalon (tm) Production [e]	11/15/1994. 61 FR 46906 (F). 61 FR 59849 (N). 62 FR 01835 (A). 62 FR 01869 (a). 62 FR 12546 (N). 62 FR 37720 (A).
Maleic Anhydride Copolymers Production	11/15/2000.
Methylcellulose Production	11/15/2000.
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production [e]	11/15/1994. 61 FR 48208(F). 61 FR 54342(C). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 37720(A).
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production [e]	11/15/1994. 61 FR 48208(F). 61 FR 54342(C). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 37720(A).
Neoprene Production	11/15/1994. 61 FR 46906(F). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 12546(N). 62 FR 37720(A).
Nitrile Butadiene Rubber Production	11/15/1994. 61 FR 46906(F). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 12546(N). 62 FR 37720(A).
Nitrile Resins Production	11/15/2000. 61 FR 48208(F). 61 FR 54342(C). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 37720(A).
Non-Nylon Polyamides Production	11/15/1994. 60 FR 12670(F).
Nylon 6 Production	Deleted as of Today.
Phenolic Resins Production	11/15/1997.
Polybutadiene Rubber Production [e]	11/15/1994. 61 FR 46906(F). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 12546(N). 62 FR 37720(A).
Polycarbonates Production [e]	11/15/1997.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
Polyester Resins Production	11/15/2000.
Polyether Polyols Production	11/15/1997. 62 FR 46804(P). 62 FR 54410(C). 62 FR 60674(R).
Polyethylene Terephthalate Production	11/15/1994. 61 FR 48208(F). 61 FR 54342(C). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 30993(A). 62 FR 31038(a). 62 FR 37720(A).
Polymerized Vinylidene Chloride Production	11/15/2000.
Polymethyl Methacrylate Resins Production	11/15/2000.
Polystyrene Production	11/15/1994. 61 FR 48208(F). 61 FR 54342(C). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 37720(A).
Polysulfide Rubber Production [e]	11/15/1994. 61 FR 46906(F). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 12546(N). 62 FR 37720(A).
Polyvinyl Acetate Emulsions Production	11/15/2000.
Polyvinyl Alcohol Production	11/15/2000.
Polyvinyl Butyral Production	11/15/2000.
Polyvinyl Chloride and Copolymers Production	11/15/2000.
Reinforced Plastic Composites Production	11/15/2000.
Styrene-Acrylonitrile Production	11/15/1994. 61 FR 48208(F). 61 FR 54342(C). 61 FR 59849(N). 61 FR 01835(A). 61 FR 01869(a). 61 FR 37720(A).
Styrene-Butadiene Rubber and Latex Production [e]	11/15/1994. 61 FR 46906(F). 61 FR 59849(N). 61 FR 01835(A). 61 FR 01869(a). 61 FR 12546(N). 61 FR 37720(A).
Production of inorganic chemicals:	
Ammonium Sulfate Production—Caprolactam By-Product Plants	11/15/2000.
Antimony Oxides Manufacturing	11/15/2000.
Carbon Black Production	11/15/2000.
Chlorine Production [e]	11/15/2000.
Chromium Chemicals Manufacturing	Deleted. 61 FR 28197.
Cyanide Chemicals Manufacturing	11/15/2000.
Cyanuric Chloride Production	Deleted as of Today.
Fume Silica Production	11/15/2000.
Hydrochloric Acid Production	11/15/2000.
Hydrogen Cyanide Production	Subsumed as of Today.
Hydrogen Fluoride Production	11/15/2000.
Phosphate Fertilizers Production	11/15/1997. 61 FR 68430(P).
Phosphoric Acid Manufacturing	11/15/1997. 61 FR 68430(P).
Quaternary Ammonium Compounds Production	Moved.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
	61 FR 28197.
Sodium Cyanide Production	Subsumed as of Today.
Uranium Hexafluoride Production	11/15/2000.
Production of organic chemicals:	
Ethylene Processes	11/15/2000.
Quaternary Ammonium Compounds Production	11/15/2000.
Synthetic Organic Chemical Manufacturing	11/15/1992.
	59 FR 19402(F).
	59 FR 29196(A).
	59 FR 32339(N).
	59 FR 48175(C).
	59 FR 53359(S).
	59 FR 53392(a).
	59 FR 54131(S).
	59 FR 54154(a).
	60 FR 05320(A).
	60 FR 18020(A).
	60 FR 18026(A).
	60 FR 18071(a).
	60 FR 18078(a).
	60 FR 63624(C).
	61 FR 31435(A).
	61 FR 07716(A).
	61 FR 07761(a).
	61 FR 43544(N).
	61 FR 43698(a).
	61 FR 64572(A).
	62 FR 02722(A).
	62 FR 44608(a).
	62 FR 44614(a)
Miscellaneous processes:	
Aerosol Can-Filling Facilities	11/15/2000.
Benzyltrimethylammonium Chloride Production	11/15/2000.
Butadiene Dimers Production	Renamed.
	61 FR 28197.
Carbonyl Sulfide Production	11/15/2000.
Chelating Agents Production	11/15/2000.
Chlorinated Paraffins Production [e]	11/15/2000.
Chromic Acid Anodizing	11/15/1994.
	60 FR 04948(F).
	60 FR 27598(C).
	60 FR 33122(C).
	60 FR 64002(a).
	61 FR 27785(A).
	61 FR 04463(A).
	61 FR 42918(A).
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/1992.
	58 FR 49354(F).
	58 FR 66287(A).
	60 FR 64002(A).
	61 FR 27785(A).
	61 FR 49263(A).
Commercial Sterilization Facilities	11/15/1994.
	59 FR 62585(F).
	60 FR 64002(a).
	61 FR 27785(A).
Decorative Chromium Electroplating	11/15/1994.
	60 FR 04948(F).
	60 FR 27598(C).
	60 FR 33122(C).
	60 FR 64002(a).
	61 FR 27785(A).
	61 FR 04463(A).
	62 FR 42918(A).
Dodecanedioic Acid Production	Subsumed.
	59 FR 19402.
Dry Cleaning (Petroleum Solvent)	11/15/2000.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
Ethylidene Norbornene Production [e]	11/15/2000.
Explosives Production	11/15/2000.
Flexible Polyurethane Foam Fabrication Operations	11/15/2000.
Friction Products Manufacturing	11/15/2000.
Halogenated Solvent Cleaners	11/15/1994. 59 FR 61801(F). 59 FR 67750(C). 60 FR 29484(C).
Hard Chromium Electroplating	11/15/1994. 60 FR 04948(F). 60 FR 27598(C). 60 FR 33122(C). 60 FR 64002(a). 61 FR 27785(A). 61 FR 04463(A). 62 FR 42918(A).
Hydrazine Production	11/15/2000.
Industrial Cleaning (Perchloroethylene)-Dry-to-dry machines	11/15/1992. 58 FR 49354(F). 58 FR 66287(A). 60 FR 64002(A). 61 FR 27785(A). 61 FR 49263(A).
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/1992. 58 FR 49354(F). 58 FR 66287(A). 60 FR 64002(A). 61 FR 27785(A). 61 FR 49263(A).
Industrial Process Cooling Towers	11/15/1994. 59 FR 46339(F).
Leather Tanning and Finishing Operations	11/15/2000.
OBPA/1,3-Diisocyanate Production [e]	11/15/2000.
Paint Stripper Users	11/15/2000.
Photographic Chemicals Production	11/15/2000.
Phthalate Plasticizers Production	11/15/2000.
Plywood/Particle Board Manufacturing	11/15/2000.
Polyether Polyols Production	Moved. 61 FR 28197.
Pulp and Paper Production	11/15/1997. 58 FR 66078(P). 59 FR 12567(C). 60 FR 09813(N). 61 FR 09383(P). 61 FR 36835(N).
Rocket Engine Test Firing	11/15/2000.
Rubber Chemicals Manufacturing	11/15/2000.
Semiconductor Manufacturing	11/15/2000.
Symmetrical Tetrachloropyridine Production [e]	11/15/2000.
Tetrahydrobenzaldehyde Production	11/15/1997.
Tire Production	11/15/2000.
Wood Treatment	Deleted. 61 FR 28197
Categories of Area Sources [f]	
Asbestos Processing	Deleted. 60 FR 61550.
Chromic Acid Anodizing	11/15/1994. 60 FR 04948(F). 60 FR 27598(C). 60 FR 33122(C). 60 FR 64002(a). 61 FR 27785(A). 61 FR 04463(A). 62 FR 42918(A).
Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines	11/15/1992. 58 FR 49354(F). 58 FR 66287(A). 60 FR 64002(A).

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
	61 FR 27785(A). 61 FR 49263(A).
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/1992. 58 FR 49354(F). 58 FR 66287(A). 60 FR 64002(A). 61 FR 27785(A). 61 FR 49263(A).
Commercial Sterilization Facilities	11/15/1994. 59 FR 62585(F). 60 FR 64002(a). 61 FR 27785(A).
Decorative Chromium Electroplating	11/15/1994. 60 FR 04948(F). 60 FR 27598(C). 60 FR 33122(C). 60 FR 64002(a). 61 FR 27785(A). 61 FR 04463(A). 62 FR 42918(A).
Halogenated Solvent Cleaners	11/15/1994. 59 FR 61801(F). 59 FR 67750(C). 60 FR 29484(C).
Hard Chromium Electroplating	11/15/1994. 60 FR 04948(F). 60 FR 27598(C). 60 FR 33122(C). 60 FR 64002(a). 61 FR 27785(A). 61 FR 04463(A). 62 FR 42918(A).
Secondary Lead Smelting	11/15/1997. 60 FR 32587(F). 60 FR 64002(a). 61 FR 27785(A). 61 FR 65334(A). 62 FR 32209(A). 62 FR 32266(a).

[a] Only sources within any category located at a major source shall be subject to emission standards under Section 112 unless a finding is made of a threat of adverse effects to human health or the environment for the area sources in a category. All listed categories are exclusive of any specific operations or processes included under other categories that are listed separately.

[b] This schedule does not establish the order in which the rules for particular source categories will be proposed or promulgated. Rather, it requires that emissions standards pursuant to Section 112(d) for a given source category be promulgated by the specified date.

The markings in the ''Promulgation Date/FEDERAL REGISTER Citation'' column of Table 1 denote the following:

(A): final amendment to a final rulemaking action.
(a): proposed amendment to a final rulemaking action.
(C): correction (or clarification) published subsequent to a proposed or final rulemaking action.
(F): final rulemaking action.
(N): notice to announce general information, such as an agency decision, availability of new data, administrative updates, etc.
(P): proposed rulemaking action.
(R): reopening of a proposed action for public comment.
(S): announcement of a stay, or partial stay, of the rule requirements.
Moved: the source category is relocated to a more appropriate industry group.
Subsumed: the source category is included within the definition of another listed category and therefore is no longer listed as a separate source category.
Renamed: the title of this source category is changed to a more appropriate title.
Deleted: the source category is officially removed from the source category list.

[c] Sources defined as electric utility steam generating units under Section 112(a)(8) shall not be subject to emission standards pending the findings of the study required under Section 112(n)(1).

[d] The Publicly Owned Treatment Works (POTW) Emissions source category has a statutory deadline for regulatory promulgation of November 15, 1995, as established by Section 112(e)(5) of the Clean Air Act. However, for purposes of determining the 18 month period applicable to the POTW source category under Section 112(j)(2), the promulgation deadline is November 15, 1997. This latter date is consistent with the Section 112(e) schedule for the promulgation of emissions standards, as published in the FEDERAL REGISTER on December 3, 1993 (58 FR 63941).

[e] Equipment handling specific chemicals for these categories or subsets of these categories are subject to a negotiated standard for equipment leaks contained in the Hazardous Organic NESHAP (HON), which was promulgated on April 22, 1994. The HON includes a negotiated standard for equipment leaks from the SOCMI category and 20 non-SOCMI categories (or subsets of these categories). The specific processes affected within the categories are listed in Section XX.X0(c) of the March 6, 1991 FEDERAL REGISTER notice (56 FR 9315).

[f] A finding of threat of adverse effects to human health or the environment was made for each category of area sources listed.

[FR Doc. 98–3446 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5966–1]

Health Risk Assessment of 1,3-Butadiene—External Review Draft

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of external review draft.

SUMMARY: This document announces the availability of an External Review Draft titled, *Health Risk Assessment of 1,3-Butadiene* (EPA/600/P–98/001A), for public review and comment. The draft was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD).

DATES: The External Review Draft is being made available on or about February 12, 1998, for a 60-day public review and comment period. Comments must be in writing and must be postmarked by April 10, 1998. See Addresses section for guidance on submitting comments.

ADDRESSES: The External Review Draft will be made available electronically on the NCEA Home Page of the Internet at http://www.epa.gov/ncea. To obtain a paper copy of the draft document, interested parties should contact ORD Publications, Center for Environmental Research Information (CERI), U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone: 513–569–7562; fax: 513–569–7566; to have your name added to the mailing list. Please provide the title (*Health Risk Assessment of 1,3-Butadiene*—External Review Draft), EPA number (EPA 600/P–98/001A) and your name and address. Copies will be mailed as soon as printed copies are available. The draft also will be available for inspection in the EPA Information Resources Center (IRC) at EPA Headquarters, Waterside Mall-Room 2904, 401 M Street, SW, Washington, DC 20460. The IRC is open from 8:00 a.m. until 5:00 p.m., Monday through Friday, excluding federal holidays.

Comments on the draft should be sent to the Project Manager for 1,3-Butadiene, Technical Information Staff (8623–D), National Center for Environmental Assessment-Washington Office, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Please submit one unbound original, to include an index of any attachments, and three copies. Comments may also be sent electronically to butadiene@epamail.epa.gov.

Please note that the Agency is seeking comments that specifically relate to the technical aspects of the draft document. All technical comments will become part of the public record. For that reason, commenters should not provide any information that is not suitable for public inspection, such as personal medical information, home address, or any information protected by copyright. Comments that address policy or other issues, or do not specifically provide technical comments on the draft, will not be included in the public record. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: Aparna Koppikar, National Center for Environmental Assessment-Washington Office, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone: 202–260–6765 (before March 1), 202–564–3242 (after March 1); e-mail: koppikar.aparna@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency is undertaking a reassessment of the health risk of 1,3-butadiene to support decision making regarding the Air Toxic Rule's Section 202(l)(2) of the Clean Air Act Amendments. This assessment focuses on mutagenicity, carcinogenicity, and reproductive/developmental effects, and is not intended to be a comprehensive health assessment. The exposure information included in this document is an overview of the ambient exposure and exposure to populations adjacent to emission sources, without any actual exposure assessment as such.

The draft document also will undergo review by the Agency's Science Advisory Board (SAB) at a public meeting to be held in Washington, DC, in May of 1998. Specific details about that meeting will be announced in a later **Federal Register** document. Interested parties will be afforded an opportunity to present brief oral comments on the draft at the meeting.

Dated: February 5, 1998.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 98–3578 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400125; FRL–5771–2]

Spring 1998 Training for EPCRA Section 313 Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a series of training courses on the reporting requirements as mandated by section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). This series of training courses will be offered during spring 1998 and are principally directed at facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607.

FOR FURTHER INFORMATION CONTACT: Michael Hart (202–260–1576) or Tascon Inc. (Fax: 301–907–9655). To register, send your name, industry, address, telephone number, fax number, e-mail address, and training location via fax to Tascon, Inc.

SUPPLEMENTARY INFORMATION: EPA will hold a series of training courses to familiarize certain facilities with their reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). These facilities may perform activities associated with the following industry sectors: manufacturing (Standard Industry Classification (SIC) SIC codes 20-39), metal mining (SIC code 10, except 1011, 1081, and 1094), coal mining (SIC code 12, except 1241), electricity generation (SIC codes 4911, 4931, and 4939 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce)), hazardous waste treatment (SIC codes 4953 (limited to facilities regulated under RCRA Subtitle C, 42 U.S.C. section 6921 *et seq.*)), solvent recovery (SIC code 7389 (limited to facilities primarily engaged in solvents recovery services on a contract or fee basis)), chemical and allied products wholesale (SIC code 5169), and petroleum bulk terminals and stations wholesale (SIC code 5171).

The training courses present basic requirements of EPCRA section 313 and PPA section 6607. A variety of hands-on exercises using the reporting forms along with supporting materials will be used to help participants understand any reporting obligations they may have

under EPCRA section 313. These training courses are designed for persons from facilities that operate in the industry sectors subject to EPCRA section 313 and PPA section 6607, persons from facilities that may be affected by the recent changes to the EPCRA section 313 and PPA section 6607 regulations, and persons from Federal and private sector facilities responsible for completing EPCRA section 313 reporting form(s), and consulting firms who may be assisting them. The training courses are designed to assist facilities that may have reporting obligations for the 1997 reporting year with reports due on or before July 1, 1998. EPA training courses will also include a day of training to provide information to assist facilities with the reporting obligations they may have for the 1998 reporting year with reports due on or before July 1, 1999. In particular, the additional information is aimed at the recently added industry sectors as a result of the May 1, 1997 final rule (62 FR 23833) (FRL–5578–3). EPA intends to present one or more sector-specific training modules for the newly added industries, but this may be modified for each of the training sessions based on responses received.

Requests for training course registration materials, schedules of dates and locations, and course agendas should be directed to Tascon, Inc. via fax. The schedule for dates and locations follow:

Dates	Location
March 10-12	Philadelphia, PA
March 17-19	Richmond, VA
March 31-April 2	Atlanta, GA
April 7-9	Boston, MA
April 8-10	San Francisco, CA
April 14-16	Milwaukee, WI
April 28-30	Salt Lake City, UT
May 5-7	Denver, CO
May 12-14	Portage, IN
May 13-15	New York, NY
May 20-22	Portland, OR
June 2-4	Baton Rouge, LA
June 9-11	Houston, TX

Complete registration applications (including person's name, mailing address, telephone number, fax number, e-mail address, industry sector, and training location) should be faxed to Tascon, Inc. Acknowledgement of applications received will be sent via fax. Upon acceptance, confirmation of registration will be sent to each applicant containing information with respect to date, location, directions, etc. Space is limited; applicants are encouraged to submit registration materials as early as possible. In the event that a training location is closed to further registration, alternate training locations will be suggested. There is no registration fee for this training. If there is insufficient interest at any of the training course locations, those courses may be canceled. The Agency bears no responsibility for attendees' decision to purchase non-refundable transportation tickets or accommodation reservations.

For specific location information, contact persons listed under ''FOR FURTHER INFORMATION CONTACT.''

List of Subjects

Environmental protection, Community right-to-know.

Dated: February 6, 1998.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–3583 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5956–7]

Proposed Agreement and Covenant Not To Sue for the Allied Paper/Portage Creek/Kalamazoo River Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of agreement and covenant not to sue for the Allied Paper/Portage Creek/Kalamazoo River superfund site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499 (''CERCLA''), and section 7003(d) of the Resources Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973(d), notification is hereby given that a proposed Agreement and Covenant Not to Sue (''Agreement'') for a portion of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site (''the Site''), located in Kalamazoo and Allegan Counties, Michigan, has been executed by Building Materials Corporation of America (''BMCA'') and GAF Kalamazoo Acquisition Corp. (''GAF Kalamazoo''). The proposed Agreement has been submitted to the Attorney General for approval.

The Michigan Department of Environmental Quality, in consultation with EPA, is currently overseeing response activities at the Site. Response activities are being conducted by four of the potentially responsible parties under the terms of an Administrative Order by Consent negotiated with the State of Michigan. The Site is on the NPL, and response activities are expected to continue for several years. The Kalamazoo, Michigan area has been designated a national Brownfields Pilot community.

BMCA and GAG Kalamazoo intend to lease and redevelop a small portion of the Site in connection with the manufacturing of roofing materials. The proposed Agreement would resolve certain potential claims of the United States and the State of Michigan under Sections 106 and 107(a) of CERCLA, 42 U.S.C. sections 9606 and 9607(a), and section 7003 of RCRA, 42 U.S.C. 6973 against BMCA and GAF Kalamazoo. The United States and the State of Michigan would also release potential claims for natural resource damages. Under the terms of the proposed agreement, BMCA and GAF Kalmazoo would conduct soil and groundwater investigations at the leased property, and would implement response activities thereafter, as approved by MDEQ, in consultation with EPA.

DATES: Comments on the proposed Agreement must be received on or before March 16, 1998.

ADDRESSES: A copy of the proposed Agreement is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Eileen L. Furey at (312) 353–6124, prior to visiting the Region 5 office.

Comments on the proposed Agreement should be addressed to Eileen L. Furey, Associate Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:

Eileen L. Furey, Associate Regional Counsel, at the address and phone number specified above.

A 30-day period, commencing on the date of publication of this document is open for comments on the proposed Agreement. Comments should be sent to the addressee identified in this document.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 98–2362 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5965–5]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, Riverfront Landfill Superfund Site, Kansas City, Missouri

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed cost recovery settlement under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h), Riverfront Landfill Superfund Site, Kansas City, Missouri.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into an administrative cost recovery settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h). This settlement is intended to resolve the liability of the City of Kansas City, Missouri, for the response costs incurred by EPA at and in connection with the Riverfront Landfill Superfund Site, Kansas City, Missouri.

DATES: Written comments must be provided on or before March 16, 1998.

ADDRESSES: Comments should be addressed to J.D. Stevens, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, and should refer to: Riverfront Landfill Superfund Site, Agreement for Recovery of Past Response Costs, EPA Docket No. VII–97–F–0023.

FOR FURTHER INFORMATION CONTACT: J.D. Stevens, Assistant Regional Counsel, United States Emvironmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; telephone number (913) 551–7322.

SUPPLEMENTARY INFORMATION: The proposed settling party is the City of Kansas City, Missouri.

The Riverfront Landfill Superfund Site (Site) was operated by the City of Kansas City (City), Missouri, from approximately the 1950's until 1972. The site is located between the Missouri River and the levee on the southern bank, and extends for approximately 3,500 feet southeast of the I–435 bridge. A removal action was completed at the Site by the City under EPA oversight in January 1995. EPA incurred response costs in connection with the Site and in September 1995 EPA requested the City to pay $321,976 in reimbursement of EPA's costs.

The proposed settlement agreement (Agreement) provides that the City will pay EPA $180,000 in settlement EPA's demands for reimbursement of response costs incurred by EPA in connection with the Site. EPA's response costs, plus accrued interest on amounts demanded through October 31, 1997, amounted to $361,846. The proposed Agreement also provides that EPA will covenant not to sue the City to recover past response costs under Section 107(a) of CERCLA, 44 U.S.C. 9607(a).

The designee of the Attorney General of the United States has approved the settlement embodied in the Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1). The effective date of the Agreement is the date upon which EPA issues written notice to the City that the public comment period has closed and that comments received, if any, do not require modification of or EPA withdrawal from the Agreement. The Agreement was filed with the Region VII, Regional Hearing Clerk on January 22, 1998 and is available for public review at the Regional offices.

Dated: February 3, 1998.

Dennis Grams, P.E.,

Regional Administrator.

[FR Doc. 98–3449 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5966–3]

Final Modified General NPDES Permit for Facilities Related to Oil and Gas Extraction on the North Slope of the Brooks Range, Alaska (Permit Number AKG–31–0000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final modified general permit.

SUMMARY: The Director, Office of Water, EPA Region 10 is issuing a modified General NPDES permit for facilities related to Oil and Gas Extraction on the North Slope of the Brooks Range in Alaska. This general permit regulates activities related to the extraction of oil and gas on the North Slope of the Brooks Range in the North Slope Borough in the state of Alaska. The modified general permit includes a provision to extend the area of coverage to include facilities off-shore of the North Slope Borough. The extension would cover sanitary and/or domestic wastewater discharges, construction dewatering, and hydrostatic test water. The modified general permit also includes a new outfall designation for the discharge of hydrostatic test water. In addition, several sections of the permit have been changed to provide clarification on issues that have been confusing during the administration of the permit to date. This permit will be used to cover dischargers that have been previously unpermitted due to resource constraints. The permit establishes effluent limitations, standards, prohibitions and other conditions on discharges from covered facilities. These conditions are based on existing national effluent guidelines, the state of Alaska's Water Quality Standards and material contained in the administrative record. A description of the basis for the conditions and requirements of the modified general permit was given in the fact sheet and changes to the proposed general permit are documented in the Response to Comments.

DATES: The general permit will become effective on March 16, 1998 and will expire on April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Copies of the final general NPDES permit, response to comments, and today's publication will be provided upon request by EPA Region 10, Public Information Office, at (800) 424–4372 or (206) 553–1200 or upon request to Cindi Godsey at (907) 271–6561. Requests may also be electronically mailed to: GODSEY.CINDI@EPAMAIL.EPA.GOV

SUPPLEMENTARY INFORMATION: The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to section 6 of that order.

The state of Alaska, Department of Environmental Conservation (ADEC), has certified that the subject discharges comply with the applicable provisions of sections 208(e), 301, 302, 306 and 307 of the Clean Water Act. The State of Alaska, Office of Management and Budget, Division of Governmental Coordination (DGC), has certified that the general NPDES permit is consistent with the approved Alaska Coastal Management Program.

Comments were received which caused changes to the proposed permit. These are detailed in the Response to Comments. The following is a summary of some of the changes:

ADEC had authorized a mixing zone for chlorine for discharges of sanitary

wastewater to the tundra in the original general permit but the size was not included in the final issuance of the general permit. This has been included in the modified general permit. A condition has been added to the permit clarifying that hydrostatic test water may not be discharged from pipelines that have been previously used to transport crude oil.

Within 120 days following service of notice of EPA's final permit decision under 40 CFR 124.15, any interested person may appeal this general NPDES permit in the Federal Court of Appeal in accordance with section 509(b)(1) of the Clean Water Act.

Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: February 3, 1998.

Roger K. Mochnick,

Acting Director, Office of Water.

[FR Doc. 98–3579 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, February 24, 1998 at 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, N.W., Washington, D.C. 20507.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Operational Reports by the Office of General Counsel and the Office of Field Programs.

Closed Session

Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register,** the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued February 10, 1998.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 98–3794 Filed 2–10–98; 8:45 am]

BILLING CODE 6750–06–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–02]

Gateway International, Inc. v. Eastern Mediterranean Shipping; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Gateway International, Inc. (''Complainant'') against Eastern Mediterranean Shipping (''Respondent'') was served February 6, 1998. Complainant alleges that Respondent is a non-vessel operating common carrier that violated sections 10(b)(6)(D) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1709(b)(6)(D) and 1709(d)(1), by accepting for shipment household goods and personal effects of staff members for a newly established non-profit hospital in Kenya, together with donated medical equipment for that hospital, receiving ocean transportation charges for the shipment, failing to deliver the shipment, and not responding to repeated requests by Complainant's personnel for information as to the location and status of the shipment.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by February 8, 1999, and the final decision of the Commission shall be issued by June 8, 1999.

Joseph C. Polking,

Secretary.

[FR Doc. 98–3520 Filed 2–11–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–01]

The Board of Commissioners of the Port of New Orleans v. Kaiser Aluminum and Chemical Corporation and the Board of Commissioners of the St. Bernard Parish Port, Harbor & Terminal District and the St. Bernard Port, Harbor & Terminal District; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by The Board of Commissioners of the Port of New Orleans (''Complaint'') against Kaiser Aluminum and Chemical Corporation and the Board of Commissioners of the St. Bernard Parish Port, Harbor & Terminal District and the St. Bernard Port, Harbor & Terminal District (''Respondents'') was served February 3, 1998. Complainant alleges that Respondents violated sections 4(b), 8 and 10 of the Shipping Act of 1984, 46 U.S.C. app. §§ 1703(b), 1707 and 1709, by entering into a lease agreement and publishing tariffs that deviate materially from provisions of Complainant's tariff, such deviations being contrary to Louisiana laws while the terms of the lease between Respondents require adherence to such laws, and providing unlawful preferences, concessions or reductions to maritime operators, carriers and shipper customers within the harbor limits of the Port of New Orleans.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.62, the initial decision of the presiding officer in this proceeding shall

be issued by February 3, 1999, and the final decision of the Commission shall be issued by June 3, 1999.

Joseph C. Polking,

Secretary.

[FR Doc. 98–3521 Filed 2–11–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 012098 AND 013098

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
J. Garner Scott, Joseph E. Parker, Jr., S&M Equipment Corporation	98–1012	01/20/98
Coventry Corporation, Principal Mutual Life Insurance Co., Principal Mutual Life Insurance Co	98–1111	01/20/98
Principal Mutual Life Insurance Co., Coventry Corporation, Coventry Health Care, Inc	98–1112	01/20/98
Baptist Hospital, Inc., Daughters of Charity National Health System, St.Thomas Hospital & Middle Tennessee Health Corp	98–1199	01/20/98
IAT Reinsurance Syndicate Ltd., National Discount Brokers Group, Inc., National Discount Brokers Group, Inc	98–1235	01/20/98
Fresenius Aktiengesellschaft, Phillip G Calderone, M.D., Nephro-Care, Inc	98–1278	01/20/98
U.S.A. Floral Products, Inc., Continental Farms Limited, Continental Farms Limited	98–1279	01/20/98
H.I.G. Investment Group, L.P., Fred McCoy, Cincinnati Test Systems, Inc	98–1280	01/20/98
N.V. Verenigd Bezit VNU, Starwood Lodging Corporation, ITT World Directories, Inc	98–1281	01/20/98
Intrawest Corporation, The Praedium Recovery Fund, LP, Angel Projects LLC	98–1283	01/20/98
American HomePatient, Inc., National Medical Systems, Inc., National Medical Systems, Inc	98–1285	01/20/98
Permiere Technologies, Inc., Xpedite Systems, Inc., Xpedite Systems, Inc	98–1288	01/20/98
McClatchy Newspapers, Inc., Cowles Media Company, Cowles Media Company	98–1291	01/20/98
Cowles Media Company, McClatchy Newspapers, Inc., McClatchy Newspaper, Inc	98–1292	01/20/98
Grey Wolf, Inc., Murco Drilling Corporation, Murco Drilling Corporation	98–1295	01/20/98
U.S. Office Products Company, Avi Shaked & Babs Waldman (spouses), PCM, Inc	98–1299	01/20/98
Avi Shaked and Babs Waldman (spouses), U.S. Office Products Company, U.S. Office Products Company	98–1300	01/20/98
Wyndham International, Inc., Interstate Hotel Corporation, Interstate Hotel Corporation	98–1307	01/20/98
Ocean Energy, Inc., United Meridian Corporation, United Meridian Corporation	98–1315	01/20/98
United Dominion Industries Limited, Radiodetection Holdings, Limited, Radiodetection Holdings, Limited	98–1325	01/20/98
Osmonics, Inc., Micron Separations, Inc., Micron Separtations, Inc	98–1333	01/20/98
GKN plc, Armstrong Rim & Wheel Mfg. Co., Armstrong Rim & Wheel Mfg. Co	98–0402	01/21/98
Phillip G. Ruffin, Margaret Elardi, Unibelievable, Inc	98–1068	01/21/98
JELD–WEN, Inc., Morgan Products Ltd., Morgan Products Ltd	98–1108	01/21/98
Newcor, Inc., Raymond B. Dorris, Turn-Matic, Inc	98–1114	01/21/98
Sara Lee Corporation, Kesterson Companies, Inc., Kesterson Companies, Inc	98–1120	01/21/98
Republic Industries, Inc., D/L Motor Company, D/L Motor Company	98–1121	01/21/98
MedPartners, Inc., Mid-America Medical Group, S.C., Mid-America Medical Group, S.C	98–1257	01/21/98
U.S.A. Floral Products, Inc., Peter F. Ullrich, XL Group Inc	98–1269	01/21/98
Quad-C Partners IV, LP, D&F Holdings, Inc., D&F Holdings, Inc	98–1275	01/21/98
Textron Inc., The Washington Water Power Company, Systran Financial Services Holding Company	98–1294	01/21/98
HWH Capital Partners, L.P., Olympus Growth Fund II, L.P., NBC Acquisition Corp	98–1305	01/21/98
Culligan Water Technologies, Inc., Water Services Corporation, Water Services Corporation	98–1323	01/21/98
H.F. Johnson Distributing Trust f/b/o Samuel C. Johnson, The Dow Chemical Company, DowBrands L.P., DowBrands, Inc., DowBrands Canada Inc	98–0692	01/22/98
Tokyo Electron Limited, Sony Corporation, Materials Research Corporation	98–1211	01/22/98
Catholic Health Initiatives, Columbia/HCA Healthcare Corporation, HCA Health Services of Midwest, Inc	98–1238	01/22/98
Universal Outdoor, Inc., James V. Riley, Transportation Media, Inc	98–1284	01/22/98
Four Media Company, Visualize d/b/a POP, Visualize d/b/a POP	98–1298	01/22/98
Reckitt & Colman plc (a British company), H.F. Johnson Distributing Trust of the Benefit of Samue, SNW Co., Inc	98–1231	01/23/98
Health Management Associates, Inc., Riley Development Systems, Inc., The Riley Hospital & Benevolent Association	98–1378	01/23/98
Blackstone Offshore Capital Partners III, LP, SK Parent Corp. (JV), SK Parent Corp. (JV)	98–0728	01/26/98
Blackstone Capital Partners III Merchant Banking Fund, SK Parent Corp. (JV), SK Parent Corp. (JV)	98–0729	01/26/98
Philip Services Corp., SK Parent Corp. (JV), SK Parent Corp. (JV)	98–0730	01/26/98
Philip Services Corp., Safety-Kleen Corp., Safety-Kleen Corp	98–0817	01/26/98
Galoob Toys, Inc., George W. Lucas, Jr., Lucas Licensing Ltd	98–1282	01/26/98
Diebold, Incorporated, Diebold, Incorporated, Inter Bold	98–1317	01/26/98
PalEx, Inc., a Delaware corporation, A. Joseph Cruz, Consolidated Drum Reconditioning Co. dba Container	98–1321	01/26/98
PalEx, Inc., a Delaware corporation, Philip M. Freeman, Consolidated Drum Reconditioning Co. dba Container Servi	98–1322	01/26/98

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 012098 AND 013098—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Cornerstone Equity Investors IV, LP, Micron Technology, Inc., Micron Custom Manufacturing Services, Inc	98–1327	01/26/98
ITEQ, Inc., Matrix Service Company, Matrix Service Company	98–1331	01/26/98
Kingsway Financial Services Inc., American Service Investment Corporation, American Service Investment Corporation	98–1334	01/26/98
PalEx, Inc., Elliot Pearlman, Acme Barrel Company, Inc., Western Container Limited Li	98–1335	01/26/98
RCN Corporation, Erol M. Onaran, Erols Internet, Inc	98–1337	01/26/98
Charter Oak Partners, Fred Thomas, Sr., ITM Corporation	98–1340	01/26/98
AlliedSignal Inc., George F. Roberts, Tensor, Inc	98–1348	01/26/98
George F. Roberts, AlliedSignal, Inc., AlliedSignal, Inc	98–1349	01/26/98
Albertson's, Inc., Crimson Associates, L.P., Crimson Associates, L.P., Seessel Holdings, Inc	98–1351	01/26/98
Quanex Corporation, Decatur Aluminum Holding Corp., Decatur Aluminum Corp	98–1354	01/26/98
Reliance Steel & Aluminum Co., Jack J. Cook, Jr., Durrett-Sheppard Steel Co., L.L.C.; Durrett-Sheppard	98–1361	01/26/98
Inernational Technology Corporation, OHM Corporation, OHM Corporation	98–1367	01/26/98
First Reserve Fund VII, Limited Partnership, Jacqueline Trust No. 2, Cardinal Holding Corp	98–1373	01/26/98
Cablevision Systems Corporation, Cablevision Systems Corporation, Rainbow Program Enterprise	98–1387	01/26/98
PVS Chemicals, Inc., Stronach Trust, The Chantland Company	98–1402	01/26/98
AutoZone, Inc., Delaware Falcon, Inc., ADAP, Inc	98–1405	01/26/98
Laidlaw Inc. (a Canadian company), Safety-Kleen Corp., Safety-Kleen Corp	98–0769	01/27/98
Robert F.X. Sillerman, Steve F. Schankman, The Contemporary Group Inc	98–1157	01/27/98
Robert F.X. Sillerman, Irving P. Zuckerman, The Contemporary Group	98–1158	01/27/98
Coltec Industries Inc., Groupe Carbone Lorraine, Helicoflex Company	98–1276	01/27/98
Koch Industries, Inc., ONEOK, Inc., ONEOK Products Company and ONG Transmission Company	98–1332	01/27/98
H.I.G. Investment Group, L.P., Frederick L. Tompkins, Vaupell Industrial Plastics, Inc	98–1368	01/27/98
Mellon Bank Corporation, Bjorn K. Borgen, Founders Asset Management, Inc	98–1372	01/27/98
Hicks, Muse, Tate & Furst Equity Fund III, L.P., Robert R. Dyson, Patterson Broadcasting, Inc	98–1932	01/28/98
Tele-Communications, Inc., Rifkin Acquisition Partners, LLLP, Rifkin Acquisition Partners, LLLP	98–1186	01/28/98
Lehman Brothers Holdings, Inc., California Microwave, Inc., California Microwave, Inc	98–1293	01/28/98
Applied Power Inc., Del City Wire, Inc., Del City Wire, Inc	98–1308	01/28/98
Hillenbrand Industries, Inc., CGW Southeast Partners I, LP, Medaes Holdings, Inc	98–1363	01/28/98
Reed International P.L.C., Geyer-McAllister Publications, Inc., Geyer-McAllister Publications, Inc	98–1380	01/28/98
Elsevier N.V., Geyer-McAllister Publications, Inc., Geyer-McAllister Publications, Inc	98–1381	01/28/98
ARLP Acquisition Co., LLC, A. Ahlstrom Corporation (a Finland corporation), SJF Aviation Holdings, Inc	98–1383	01/28/98
Advanced Lighting Technologies, Inc., Deposition Sciences, Inc., Deposition Sciences, Inc	98–1224	01/29/98
Harrisons & Crosfield plc, The Harold C. Simmons Family Trust No. 2, Rheox, Intn'l Inc., RIMC., Inc. and Enenco, Inc	98–1229	01/29/98
Republic Industries, Inc., Charles L. Clancy, Jr., Chuck Clancy Ford of Marietta, Inc	98–1314	01/29/98
Leggett & Platt, Incorporated, Syndicate Systems, Inc., Syndicate Systems, Inc	98–1324	01/29/98
Compagnie de Saint-Gobain, Bird Corporation Bird Corporation	98–1358	01/29/98
Orion Capital Corporation, Strickland Insurance Group, Inc., Strickland Insurance Group, Inc	98–1377	01/29/98
Richard J. Nash, Arthur J. Goodsel, Huron Plastics Group, Inc; Tadim, Inc	98–1400	01/29/98
Joe Balous, Arthur J. Goodsel, Huron Plastics Group, Inc.; Tadim, Inc	98–1401	01/29/98
American Financial Group, Inc., James Harry Leggett, Jr., Arkansas National Life Insurance Company	98–1403	01/29/98
MRV Communications, Inc., Whittaker Corporation, Whittaker Xyplex, Inc	98–1444	01/29/98
Motorola, Inc., American Mobile Satellite Corporation, American Mobile Satellite Corporation	98–1289	01/30/98
American Mobile Satellite Corporation, Motorola, Inc., Motorola ARDLS, Inc., Motorola ARDIS Acquisition, Inc	98–1290	01/30/98
Midwest Energy, Inc., KN Energy, Inc., KN Energy, Inc	98–1297	01/30/98
Federal Express Corporation, UAL Corporation, UAL Corporation	98–1301	01/30/98
Brunswick Corporation, Gerald L. Dettinger, ParaBody, Inc	98–1355	01/30/98
Brunswick Corporation, Stephen M. Duncan, ParaBody, Inc	98–1356	01/30/98
Rent-Way, Inc., Bill C. Ogle Sr., Champion Rentals, Inc	98–1360	01/30/98
Bay Networks, Inc., NetSpeak Corporation, NetSpeak Corporation	98–1362	01/30/98
John J. Rigas, H.F. Lenfest, Hyperion Telecommunications of Harrisburg	98–1369	01/30/98
John J. Rigas, Tele-Communications, Inc., Hyperion Telecommunications of Harrisburg	98–1370	01/30/98
John J. Rigas, John J. Rigas, Hyperion Telecommunications of Harrisburg	98–1371	01/30/98
Colony Investors II, L.P., Public Storage, Inc., Public Storage, Inc	98–1382	01/30/98
EG&G, Inc., TI Group, plc (a British company), John Crane Inc. (Belfab Division)	98–1384	01/30/98
Frontier Corporation, GlobalCenter, Inc., GlobalCenter, Inc	98–1388	01/30/98
Pfingsten Executive Fund, L.P., M.E. Abrams, Clercom, Inc. d/b/a Diesel Eagle	98–1389	01/30/98
PhyCor, Inc., CareWise, Inc., CareWise, Inc	98–1390	01/30/98
Sylvan Learning System, Inc., Marlene Canter, Canter and Associates, Inc.; Canter Educational	98–1395	01/30/98
W. Galen Weston, RJR Nabisco Holdings Corp., Plush Pippin Corporation	98–1404	01/30/98
J.W. Childs Equity Partners, L.P., H.I.G. Investment Group, L.P., Heath Holding Corp	98–1407	01/30/98
American International Group, Inc., American Bankers Insurance Group, Inc., American Bankers Insurance Group, Inc	98–1410	01/30/98
O. Bruton Smith, H. Skip Berg, Brenda Raceway Corporation	98–1415	01/30/98
Castle Harlan Partners III, L.P., BankAmerica Corporation, Land 'N' Sea Distributing, Inc	98–1426	01/30/98
USN Communications, Inc., Mark Hatten, Hatten Communications Holing Company, Inc	98–1437	01/30/98
Hughes Supply, Inc., Chad Supply, Inc., Chad Supply, Inc	98–1442	01/30/98
Matthews Studio Equipment Group, Stonebridge Partners Equity Funds, L.P., Four Star Holding, Inc	98–1443	01/30/98
Waste Management, Inc., International Technology Corporation, International Technology Corporation	98–1453	01/30/98
Plainwell Holding Company, Pope & Talbot, Inc., Pope & Talbot, Wis., Inc.	98–1455	01/30/98

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 012098 AND 013098—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
NCO Group, Inc., TeleSpectrum Worldwide Inc., TeleSpectrum Worldwide Inc	98–1456	01/30/98
Golder, Thomas, Cressey, Rauner Fund V, L.P., The Modern Group, Inc., The Modern Group, Inc. (Dragon Rental Division)	98–1457	01/30/98
Clayton, Dubilier & Rice Fund V Limited Partnership, Norfolk Southern Corporation, North American Van Lines, Inc.	98–1460	01/30/98
Enron Corp., Compagnie Generale des Eaux (a French corporation), Anjou Construction and Services Company; Limbach Holdin	98–1462	01/30/98
Federal-Mogul Corporation, Fel-Pro Realty Corporation, Fel-Pro Realty Corporation	98–1467	01/30/98
The Robert Rosenkranz Trust, Dennis N. Horowitz, Smith St. John Company, Smith St. John of Georgia, Inc.,	98–1470	01/30/98
H&R Block, Inc., Estate of David B. Clayton, Estate of David B. Clayton	98–1471	01/30/98
Dominion Resources, Inc., Unicom Corporation, Commonwealth Edison Company	98–1484	01/30/98
Cablevision Systems Corporation, The Wiz, Inc. (Debtor-in-Possession), The Wiz, Inc. (Debtor-in-Possession)	98–1513	01/30/98

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–3505 Filed 2–11–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0327]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by March 16, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Petition For Administrative Stay of Action—21 CFR 10.35—(OMB Control Number 0910–0194)—Reinstatement

FDA regulations in 21 CFR 10.35, issued under the authority of section 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(a)), set forth the format and procedures by which an interested person may file a petition for an administrative stay of action.

Respondents to this collection of information are interested persons who choose to file a petition for an administrative stay of action. Such a petition must: (1) Identify the decision involved; (2) state the action requested, including the length of time for which a stay is requested; and (3) include a statement of the factual and legal grounds on which the interested person relies in seeking the stay. The information provided in the petition is used by the agency to determine whether the requested stay should be granted.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.35	7	1	7	100	700

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

The burden estimate for this collection of information is based on FDA's experience with petitions for administrative stay of action over the past 3 years. Agency personnel responsible for processing the filing of petitions for administrative stays of action estimate that seven such petitions are received by the agency annually, with each requiring approximately 100 hours of preparation time.

Dated: February 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–3504 Filed 2–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0049]

Draft Guidance for Industry on Environmental Assessment of Human Drug and Biologics Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Environmental Assessment of Human Drug and Biologics Applications.'' This draft guidance is intended to provide information on when an environmental assessment (EA) should be submitted in support of a human drug or biologics application and recommendations on how to prepare EA's.

DATES: Written comments may be submitted on the draft guidance document by April 13, 1998. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance for industry entitled ''Environmental Assessment of Human Drug and Biologics Applications'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send two self-addressed labels to assist that office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. See the **Supplementary Information** section for electronic access to this document.

FOR FURTHER INFORMATION CONTACT: Nancy B. Sager, Center for Drug Evaluation and Research (HFD–357), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5629 or Daniel C. Kearns, Center for Biologics Evaluation and Research (HFM–206), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3031.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Environmental Assessment of Human Drug and Biologics Applications.'' The National Environmental Policy Act of 1969 (NEPA) requires all Federal agencies to assess the environmental effects of their actions and to ensure that the interested and affected public is informed of environmental analyses. FDA is required under NEPA to consider the environmental effect of approving drug and biologics applications as an integral part of its regulatory process. Under the President's reinventing Government initiatives announced in April 1995, FDA reevaluated and revised its environmental regulations to reduce the number of EA's required to be submitted by industry and, consequently, the number of findings of no significant impact prepared by the agency under NEPA.

In the **Federal Register** of April 3, 1996 (61 FR 14922) (republished May 1, 1996 (61 FR 19476)), FDA issued for public comment a notice of proposed rulemaking that proposed additional categorical exclusions for those actions the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) have determined normally do not individually or cumulatively have a significant effect on the quality of the human environment. The final rule was published in the **Federal Register** of July 29, 1997 (62 FR 40570), and became effective on August 28, 1997. This draft guidance is based on the final rule and is consistent with the Food and Drug Administration Modernization Act of 1997; it is intended to supersede CDER's ''Guidance for Industry for the Submission of an Environmental Assessment in Human Drug Applications and Supplements,'' which published in November 1995.

FDA's regulations in part 25 (21 CFR part 25) specify that environmental assessments must be submitted as part of certain new drug applications, abbreviated applications, applications for marketing approval of a biologic product, supplements to such applications, investigational new drug applications, and for various other actions (see § 25.20), unless the action qualifies for a categorical exclusion.

This guidance provides information on when an EA should be submitted and recommendations on how to prepare EA's for submission to CDER and CBER for these drug or biologics applications. Topics covered include: (1) When categorical exclusions apply, (2) when to submit an EA, (3) the content and format of EA's, (4) specific guidance for the environmental issues that are most likely to be associated with human drugs and biologics, (5) test methods, (6) an applicant's treatment of confidential information submitted in support of an EA, and (7) drug master files and master files.

This draft guidance represents the agency's current thinking on the environmental assessment of human drug and biologics applications. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

II. Request for Comments

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of this draft guidance is available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/cberftp.html.

Dated: February 3, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–3496 Filed 2–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–228]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. This collection is necessary to ensure compliance with section 1854 of the Balanced Budget Act. Under Part C of the Social Security Act, a Medicare+Choice (M+C) organization is required to submit an Adjusted Community Rate (ACR) proposal prior to 05/01/98, which is used by M+C organizations to price its benefit packages. Without emergency approval entities interested in participating in the M+C program will not be afforded enough time to submit the required application prior to the 05/01/98 deadline. As a result, public harm is likely to result because eligible individuals may not receive the M+C health insurance options stipulated by the BBA.

HCFA is requesting OMB review and approval of this collection by 02/20/98, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 02/19/98. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection.

Title of Information Collection: Managed Care Adjusted Community Rate (ACR) Proposal.

Form Number: HCFA–R–228 (OMB approval #: 0938–NEW).

Use: This collection effort will be used to price the benefit package sold to Medicare beneficiaries who will be enrolled in M+C. Organizations submitting the Managed Care Adjusted Community Rate Proposal form would include all M+C organizations plus any organization intending to contract with HCFA as a M+C organization. This would include any eligible organizations with a managed care risk contract, as defined in 42 CFR § 417.401 of federal regulations, in effect on January 1, 1998 with intentions of offering a M+C plan starting January 1, 1999. These current Medicare managed care risk contractors will be required to submit this form no later than May 1, 1998 for the calendar year 1999.

Frequency: Annually.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Number of Respondents: 350.

Total Annual Responses: 350.

Total Annual Hours Requested: 35,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 02/19/98:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–1415, Attn: John Rudolph HCFA–R–228

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: February 5, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–3585 Filed 2–11–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–227]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA), the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. We are requesting emergency clearance so that we can meet the requirements under the Balanced Budget Act (BBA) (section 1851 (d)) which mandates that HCFA provide comparable information between managed care and Fee For Service (FFS) regarding quality.

HCFA is requesting OMB review and approval of this collection by 03/2/98, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 02/27/98. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection.

Title of Information Collection: Research and Analytic Support for implementing Performance Measurement in Fee for Service (FFS).

Form Number: HCFA–R–227 (OMB approval #: 0938–NEW).

Use: As required by the Balanced Budget Act Section 1851 (d) (BBA), HCFA needs to develop comparable performance measures for FFS Medicare and group practices. This project will enable HCFA to evaluate the effectiveness and outcomes of FFS services purchased. This survey builds on a well established instrument called the SF–36 (©1992 Medical Outcomes Trust) to determine health related quality of life. It is a self administered survey that is completed by the beneficiary. We will be looking at whether the beneficiary's health has improved, stayed the same, or deteriorated over a 2 year period of time compared to their expected health status. It will be risk-adjusted (e.g., for socioeconomic status, age, gender, and other health conditions).

The identical instrument is being used in managed care. The Health of Seniors survey will gather the same information about the health status of beneficiaries in FFS as is being collected in managed care. The 1998 survey will provide baseline measurement, (like what is being collected in managed care) to determine whether the beneficiaries' health has improved, stayed the same, or deteriorated over a 2 year period of time compared to their expected health status. HCFA may potentially disseminate this information to Medicare beneficiaries so that they may make informed health care choices.

Frequency: Biennially

Affected Public: Individuals or Households, Business or other for-profit , Not-for-profit, Farms, Federal government and, State, Local or Tribal Government.

Number of Respondents: 3,800.

Total Annual Responses: 3,800.

Total Annual Hours Requested: 1,600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 02/27/98:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–1415,

Attn: John Rudolph HCFA–R–227

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: February 6, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–3591 Filed 2–11–98; 8:45 am]

BILLING CODE 4120–03–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–839020

Applicant: Peter A. Larsen, St. Cloud, MN.

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.

PRT–839021

Applicant: Ferdinand Hantig, Las Vegas, NV.

The applicant requests a permit for multiple export/re-import for one male, captive-born tiger (*Panthera tigris*). The applicant will transport the animal to/from locations around the worldwide, for up to three years, for the purpose of enhancement of the survival of the species through conservation education.

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 700, 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 700, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358–2281).

Dated: February 6, 1998.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority

[FR Doc. 98–3544 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On December 11, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 238, Page 65281, that an application had been filed with the Fish and Wildlife Service by George Kalb for a permit (PRT–837107) to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Northwest Territories, Canada.

Notice is hereby given that on January 29,1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 28, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 167, Page 45674, that an application had been filed with the Fish and Wildlife Service by Collins Kellogg, Sr. for a permit (PRT–833625) to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Northwest Territories, Canada, prior to April 30, 1994.

Notice is hereby given that on January 16, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On November 14, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 220, Page 61139, that an application had been filed with the Fish and Wildlife Service by Curtis H. Springer for a permit (PRT 835829) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the South Beaufort Sea population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on January 9, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: February 6, 1998.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–3541 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Silvio O. Conte National Fish and Wildlife Refuge

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of Establishment of Silvio O. Conte National Fish and Wildlife Refuge.

SUMMARY: The Silvio O. Conte National Fish and Wildlife Refuge Act requires that when sufficient property is acquired, public notices be published. The Connecticut River Watershed Council donated Third Island, Deerfield, Massachusetts, to the U.S. Fish and Wildlife Service for inclusion in the Silvio O. Conte National Fish and Wildlife Refuge. This notice is to inform the public that sufficient property has been acquired to be managed as a refuge.

EFFECTIVE DATE: February 12, 1998.

ADDRESSES: Silvio O. Conte National Fish and Wildlife Refuge, at the Great Falls Discovery Center; 38 Avenue A, Turners Falls, Massachusetts, 01376.

FOR FURTHER INFORMATION CONTACT:

Lawrence Bandolin, Project Leader, at (413) 863–0209, FAX (413) 863–3070, E-mail: r5w__socnwr@mail.fws.gov

SUPPLEMENTARY INFORMATION: The Silvio O. Conte National Fish and Wildlife Refuge Act, Public Law 102–212, Section 106(b) Establishment, requires that when sufficient property is acquired public notices be published. The Connecticut River Watershed Council donated Third Island, Deerfield, Massachusetts, to the U.S. Fish and Wildlife Service for inclusion in the Silvio O. Conte National Fish and Wildlife Refuge. With this donation sufficient property has been acquired for the Secretary of the Interior to establish the Silvio O. Conte National Fish and Wildlife Refuge.

Ronald Lambertson,

Regional Director, Region 5, Hadley, Massachusetts.

[FR Doc. 98–3537 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–1040–00]

Availability of the Gila Box Riparian National Conservation Area Management Plan, Safford Field Office, AZ.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Safford Field Office, United States Department of the Interior, Bureau of Land Management has completed the Gila Box Riparian National Conservation Area Management Plan, Environmental Assessment, and Record of Decision. The Arizona Desert Wilderness Act of 1990 (Pub. L. 101–628) designated the Gila Box Riparian National Conservation Area (RNCA) in order to conserve, protect, and enhance its riparian areas and associated resources, and the aquatic, wildlife, archaeological, paleontological, scientific, cultural, recreational, educational, scenic, and other resources and values of such areas. The law also required the BLM to develop a comprehensive management plan. The Gila Box Management Plan, sets the management direction for the RNCA for the next 15 years. For a period of 30 days from the date of publication of this notice in the **Federal Register**, interested parties have the right of appeal pursuant to 43 Code of Federal Regulations, Part 4. Please submit any appeal to William T. Civish, Safford Field Office Manager, 711 14th Avenue, Safford, Arizona 85546. For further assistance contact Elmer Walls, Gila Box Team Leader, Safford Field Office, 711 14th Avenue, Safford, Arizona 85546; telephone number (520) 348–4400.

Dated: January 30, 1998.

William T. Civish,

Field Office Manager.

[FR Doc. 98–3595 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–00; AA–6678]

Public Land Order No. 7314; Withdrawal of Public Lands for Levelock Village Selection; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 7,493 acres of public lands from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to Section 22(j)(2) of the Alaska Native Claims Settlement Act. This action also reserves the lands for selection by the Levelock Natives, Limited, the village corporation for Levelock. This withdrawal is for a period of 120 days; however, any lands selected shall remain withdrawn by the order until they are conveyed. Any lands described herein that are not selected by the corporation will remain subject to the terms and conditions of any withdrawal or segregation of record.

EFFECTIVE DATE: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

By virtue of the authority vested in the Secretary of the Interior by Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and are hereby reserved for selection under Section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 (1994), by the Levelock Natives, Limited, the village corporation for Levelock:

Seward Meridian

T. 10 S., R. 44 W.,
Secs. 14, 23, 26, and 27.
T. 11 S., R. 44 W.,
Sec. 20.
T. 13 S., R. 44 W.,
Secs. 3, 22, 23, and 24.
T. 13 S., R. 45 W.,
Secs. 25, 35, and 36.

The areas described aggregate a total of approximately 7,493 acres.

2. Prior to conveyance of any of the lands withdrawn by this order, the lands shall be subject to administration by the Secretary of the Interior under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal.

3. This order constitutes final withdrawal action by the Secretary of the Interior under Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1994), to make lands available for selection by the Levelock Natives, Limited, to fulfill the entitlement of the village for Levelock under Section 12 and Section 14(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 and 1613 (1994).

4. This withdrawal will terminate 120 days from the effective date of this order; provided, any lands selected shall remain withdrawn pursuant to this order until conveyed. Any lands described in this order not selected by the corporation will be subject to the terms and conditions of any other withdrawal or segregation of record.

5. It has been determined that this action is not expected to have any significant effect on subsistence uses and needs pursuant to Section 810(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120(c) (1994) and this action is exempted from the National Environmental Policy Act of 1969, 42 U.S.C. 4321 note (1994), by Section 910 of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1638 (1994).

Dated: February 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–3604 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 83356–03]

Public Land Order No. 7315; Partial Revocation of Secretarial Orders Dated October 20, 1917, and February 5, 1924; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes two Secretarial orders insofar as they affect 178.31 acres of public land withdrawn for stock driveway purposes. The land is no longer needed for the purpose for which it was withdrawn. The revocation is needed to permit disposal of land under the Recreation and Public Purposes Act, as well as other disposals by sale and exchange. This action will open the land to surface entry, unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, PO Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated October 20, 1917, and February 5, 1924, which withdrew public land for Stock Driveway No. 3 (Wyoming 1), are hereby revoked insofar as they affect the following described land:

Sixth Principal Meridian

T. 47 N., R. 88 W.,
Sec. 21, lots 2 and 3, lots 5 to 8, inclusive, and NE¼SE¼;
Sec. 22, lots 10, 11, and 14.

The area described contains 178.31 acres in Washakie County.

2. At 9 a.m. on March 16, 1998, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 16, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: February 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–3584 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–22–M

INTERNATIONAL TRADE COMMISSION

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) requesting emergency processing for review and clearance under the Paperwork Reduction Act of 1995, (44 U.S.C. Chap. 35). The Commission has requested OMB approval of this submission by COB February 17, 1998.

EFFECTIVE DATE: February 6, 1998.

Purpose of Information Collection

This information collection is for use by the Commission in connection with investigation No. 332–390, *Advice Concerning the Proposed Expansion of the Information Technology Agreement,* instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was

requested by the United States Trade Representative (USTR). The Commission expects to deliver the results of its investigation to the USTR in two phases. Phase one will be delivered on March 27 and phase two will be delivered on May 1.

Summary

Title: Survey Worksheets for Investigation No. 332–390, Advice Concerning the Proposed Expansion of the Information Technology Agreement.

Summary: Staff of the USITC plans to make telephone contacts with a broad representation of U.S. companies and trade associations. The survey worksheets contain fewer that 10 questions that require responses from industry and are designed to provide staff with a uniform approach and consistent format for recording responses. Information collected will be used to assess U.S. companies views on the possible elimination of duties and the existence of nontariff barriers on certain products.

Need and Use of Information: The responses collected will contribute to the advice and information requested by the USTR on a list of information technology products that are being considered for duty elimination in current Information Technology Agreement negotiations.

Description of Respondents: Firms and trade associations.

Number of Respondents: 1,250.

Frequency of Responses: Reporting—One Time.

Total Burden Hours: 625.

Additional Information or Comment

Copies of agency submissions to OMB in connection with this request may be obtained from Sylvia McDonough, Branch Chief, Electronic Technology, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436 (telephone no. 202–708–4052). Comments should be addressed to: Desk Officer for U.S. International Trade Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (telephone no. 202–395–7340). Copies of any comments should also be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal, (telephone no. 202–205–1810).

By order of the Commission.

Issued: February 6, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–3605 Filed 2–11–98; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Revision of Certain Dollar Amounts in The Bankruptcy Code Prescribed Under Section 104(B) of The Code

AGENCY: Judicial Conference of the United States.

ACTION: Notice is provided that various dollar amounts in title 11, United States Code, are increased.

SUMMARY: Section 108 of the Bankruptcy Reform Act of 1994 established the mechanism for the automatic three-year adjustment of dollar amounts in certain sections of the Bankruptcy Code by adding subsection (b) to section 104 of title 11. That provision states:

(b)(1) On April 1, 1998, and at each 3-year interval ending April 1 thereafter, each dollar amount in effect under [the designated sections of the code] immediately before such April 1 shall be adjusted—

(A) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(B) to round to the nearest $25 the dollar amount that represents such change.

(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the **Federal Register** the dollar amounts that will become effective on such April 1 under sections 109(e), 303(b), 507(a), 522(d), and 523(a)(2)(C) [of the Bankruptcy Code].

(3) Adjustments made in accordance with paragraph (1) shall not apply with respect to cases commenced before the date of such adjustments.

Revision of Certain Dollar Amounts in Bankruptcy Code

Notice is hereby given that the dollar amounts are increased in the sections in title 11, United States Code, as set out in the following chart. These increases do not apply to cases commenced before the effective date of the adjustments, i.e., April 1, 1998. Official Bankruptcy Forms 6E and 10 also will be amended to reflect these adjusted dollar amounts.

11 U.S.C.	Dollar amount to be adjusted	New (adjusted) dollar amount
Section 109(e)—allowable debt limits for filing bankruptcy under Chapter 13	$250,000 (each time it appears). 750,000 (each time it appears).	$269,250 (each time it appears). 807,750 (each time it appears).
Section 303(b)—minimum aggregate claims needed for the commencement of an involuntary bankruptcy:		
(1)—in paragraph (1)	10,000	10,775.
(2)—in paragraph (2)	10,000	10,775.
Section 507(a)—priority claims:		
(1)—in paragraph (3)	4,000	4,300.
(2)—in paragraph (4)(B)(i)	4,000	4,300.
(3)—in paragraph (5)	4,000	4,300.
(4)—in paragraph (6)	1,800	1,950.
Section 522(d)—value of property exemptions allowed to the debtor:		
(1)—in paragraph (1)	15,000	16,150.
(2)—in paragraph (2)	2,400	2,575.
(3)—in paragraph (3)	400	425
	8,000	8,625.
(4)—in paragraph (4)	1,000	1,075.
(5)—in paragraph (5)	800	850
	7,500	8,075.

11 U.S.C.	Dollar amount to be adjusted	New (adjusted) dollar amount
(6)—in paragraph (6)	1,500	1,625.
(7)—in paragraph (8)	8,000	8,625.
(8)—in paragraph (11)(D)	15,000	16,150.
Section 523(a)(2)(C)—''luxury goods and services'' or cash advances obtained by the consumer debtor within 60 days before the filing of a bankruptcy petition, which are considered non-dischargeable.	1,000 (each time it appears).	1,075 (each time it appears).

FOR FURTHER INFORMATION CONTACT: Francis F. Szczebak, Chief, Bankruptcy Judges Division, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1900.

Dated: February 3, 1998.

Francis F. Szczebak,

Chief, Bankruptcy Judges Division.

[FR Doc. 98–3599 Filed 2–11–98; 8:45 am]

BILLING CODE 2210–01–P

DEPARTMENT OF JUSTICE

Notice of Filing of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Recovery Act (''CERCLA'')

In accordance with Departmental policy, 28 CFR 50.7, and Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Settlement Agreement in *In re R.C. Dick Geothermal Corporation*, Chap. 7, Bankr. No. 92–1–1293, and *In re R.C. Dick Geothermal L.P.*, Chap. 7, Bankr. No. 92–1–1294, (Substantively Consolidated) (referred to herein collectively as ''R.C. Dick'') was filed with the United States Bankruptcy Court for the Northern District of California on January 23, 1998. This Settlement Agreement resolves an Administrative Expense claim filed by the United States against R.C. Dick, pursuant to Section 107(a), 42 U.S.C. 9607(a). The settling debtors were the owners/operators of a facility located on 1,100 acres in a remote location in Northern Sonoma and Southern Mendocino Counties (the ''Site'') at the time of disposal of hazardous substances. The Settlement Agreement provides that the Trustee, on behalf of the debtor's estate, will pay 50% of any funds remaining in the bankruptcy estate, after the payment of the Trustee's fees and expenses and any other professional fees approved by the Court, to the Hazardous Substance Superfund for response costs incurred by the United States at the Site. In addition, the United States may perfect a lien against the real property owned by the debtor for any unpaid costs incurred with respect to 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 Settlement Agreement. 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 *In re R.C. Dick Geothermal Corporation*, DOJ #90–11–2–1298.

The proposed Settlement Agreement may be examined at the office of the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; 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 Settlement Agreement 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 $5.25 (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. 98–3592 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Aluminum Metal Matrix Composites (AlMMC) Consortium Joint Venture

Notice is hereby given that, on December 15, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Aluminum Metal Matrix Composites (AlMMC) Consortium Joint Venture, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture, and (2) the nature and objectives of the venture. The notifications were filed for the purpose of limiting recovery of plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are Aluminum Consultants Group, Inc., Murrysville, PA; Cast Metal Composites, Inc., Cleveland, OH; Delphi Chassis Systems, Dayton, OH; DWA Aluminum Composites, Chatsworth, CA; Metal Matrix Cast Composites, Inc., Waltham, MA; Metrix Composites, Inc., Clinton, NY; and Triton Systems, Inc., Chelmsford, MA. Technologies Research Corporation, Ann Arbor, MI has been engaged to administer the venture on behalf of the participants.

The objective of the venture is to undertake research and development activities focusing on aluminum metal matrix composites.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–3593 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Research Corporation

Notice is hereby given that, on December 1, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Semiconductor Research Corporation filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Suss Advanced Lithography, Inc. d/b/a SAL Corporation, Waterbury, VT; and Tessera, Inc., San Jose, CA have become Affiliate Members of the Semiconductor Research Corporation. No other changes

have been made in either the membership, corporate name, or planned activities of this group research project. Membership in the project remains open, and the Semiconductor Research Corporation intends to file additional written notifications disclosing all changes in membership.

On January 7, 1985, the Semiconductor Research Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 30, 1985 (50 FR 4281). The last notification was filed with the Department on September 16, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 31, 1997 (62 FR 58983).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–3594 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 8, 1997, Johnson & Johnson Pharmaceutical Partners, HC–02 State Road 933, KMO.1 Mamey Ward HC–02 Box 19250, Gurabo, Puerto Rico 00778–9629, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of sufentanil (9740), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture sufentanil for bulk distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 13, 1998.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3611 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21, of the Code of Federal Regulations (CFR), this is notice that on November 4, 1997, Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 13, 1998.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3612 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated October 3, 1997, and published in the **Federal Register** on October 22, 1997, (62 FR 54856), Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture medication for the treatment of AIDS wasting syndrome and as an antiemetic.

DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Norac Company, Inc. to manufacture tetrahydrocannabinols is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3608 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated October 6, 1997, and published in the **Federal Register** on October 22, 1997, (62 FR 54857), Novartis Pharmaceuticals Corp., Attn: Compliance, 59 Route 10, East Hanover, 556 Morris Avenue, Summit, New Jersey 07901, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the finished product for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Novartis Pharmaceuticals Corp. to manufacture methylphenidate is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of

controlled substance listed above is granted.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3607 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated October 3, 1997, and published in the **Federal Register** on October 22, 1997, (62 FR 54857), Nycomed, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of meperidine (9230), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the bulk product for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Nycomed, Inc. to manufacture meperidine is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3606 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that by letter dated October 2, 1997, which was received for processing on October 26, 1997, Nycomed, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724) a basic class of controlled substance listed in Schedule II.

This bulk manufacture of methylphenidate is being conducted in conjunction and coordination with another bulk manufacturer.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 13, 1998.

Dated: January 8, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3613 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 9, 1997, Orpharm, Inc., 728 West 19th Street, Houston, Texas 77008, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methadone (9250)	II
Methadone-intermediate (9254)	II
Levo-alphacetylmethadol (9648)	II

The firm plans manufacture methadone and methadone-intermediate for production of LAAM.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 13, 1998.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3609 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876–3771, made application to the Drug Enforcement Administration (DEA) by letter dated December 17, 1997, for registration as a bulk manufacturer of ecgonine (9180), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture small quantities of ecgonine which will be further converted into derivatives for incorporation in drug of abuse detection kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 13, 1998.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3610 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Women's Bureau

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Women's Bureau is soliciting comments concerning the proposed new collection of the Conference Evaluation Form.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 13, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Airline Easley, Women's Bureau, 200 Constitution Ave., NW, Room S–3311, Washington, DC 20210, (202) 219–6601x136 (this is not a toll-free number), Fax (202) 219–5529, easley-arline@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A structured evaluation instrument is needed to determine if the objectives of the conferences sponsored, wholly or in part, by the Women's Bureau are meeting the needs of the constituents for whom they were designed. Currently, a comment card is availabe at most conferences for constituent remarks, but these remarks do not speak to all the issues involved in a comprehensive evaluation. Without comprehensive information, we cannot clearly understand if the conference goals are being met, or how we can more efficiently meet constituent needs.

II. Current Actions

We are proposing that the ''Conference Evaluation'' be available at the close of conferences or meetings sponsored by the Women's Bureau so that constituents can voluntarily provide answers to questions that will help us to streamline the conferences or meetings to more fully meet the needs of the attendees. Information from the evaluation should flag strengths and weaknesses in the program and its setting.

Type of Review: This is a new data collection instrument.

Agency: US Department of Labor, Women's Bureau.

Title: Conference Evaluation.

Affected Public: Attendees of Women's Bureau conferences or meetings.

Cite/Reference/Form/etc: Conference Evaluation.

Total Respondents: 5000.

Frequency: On occasion.

Total responses: 5000.

Average Time per Response: 1.5 minutes.

Estimated Burden Hours: 125 hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 9, 1998.

Cellis N. Phillips,

Chief, Office of Policy and Programs.

[FR Doc. 98–3589 Filed 2–11–98; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Business Research Advisory Council; Renewal

In accordance with the provision of the Federal Advisory Committee Act, and after consultation with the General Services Administration (GSA), I have determined that the renewal of the Business Research Advisory Council (BRAC) is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Council will advise the Commissioner of Labor Statistics on technical economic and statistical matters, in the analysis of the Bureau's statistics, and on the broader aspects of its program from an informed business point of view; and provide a realistic and timely, two-way communications structure between business users and providers of basic economic statistics and a major governmental statistics-producing unit.

Council membership is selected to represent a cross section of American business and industry.

The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

Interested persons are invited to submit comments regarding renewal of the Business Research Advisory Council. Such comments should be addressed to: Nancy J. Sullivan, Bureau of Labor Statistics, Room 4110, Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone: (202) 606–5903.

Signed at Washington, DC this 6th day of February 1998.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 98–3588 Filed 2–11–98; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

February 5, 1998.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an

opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden will be approximately 10 hours per annual response and we anticipate 56 responses with no capital/start-up costs, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed collection of the Planning Guidance and Instructions for Submission of Annual State Plans for FY'99 Welfare-to-Work Formula Grants.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 13, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: U.S. Department of Labor, Employment and Training Administration, ATTENTION: Stephanie Curtis, 200 Constitution Avenue, NW., Room N–4670, Washington, DC 20210, 202–219–7533 extension 166 (this is not a toll free number) and/or via e-mail curtiss@doleta.gov; fax number is 202–219–7190.

SUPPLEMENTARY INFORMATION:

I. Background

The Balanced Budget Act of 1997, signed by the President on August 5, 1997, authorized the U.S. Department of Labor to provide Welfare-to-Work (WtW) Grants to States and local communities to provide transitional employment assistance to move Temporary Assistance for Needy Families (TANF) recipients with significant employment barriers into unsubsidized jobs providing long-term employment opportunities. In order to receive formula grant funds, the statute provides that the State must submit a plan for the administration of the WtW grant. This Planning Guidance and Instructions for Submission of Annual State Plans addresses the information required from States which will enable them to qualify for the FY '99 formula grant funds. Separate guidance will be issued for both the grants to the Indian tribes and the competitive grants.

II. Current Actions

The 1998 Planning Guidance and Instructions has been minimally revised for FY'99 to solicit information required from States which will enable them to obtain FY '99 formula grant funds. These revisions affect the timing for the submission of plans as well as optional additional information which States may submit indicating their interest in receiving FY '98 funds which will be reallocated.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Planning Guidance and Instructions for Submission of Annual State Plans for FY '99 Welfare-to-Work Formula Grants.

OMB Number: 1205–0new.

Affected Public: State and local governments.

Total Respondents: 56.

Frequency: Annually.

Total Responses: 56.

Average Time per Response: 10 hours.

Estimated Total Burden Hours: 560.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for the Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 5, 1998.

Dennis Lieberman,

Acting Director, Welfare-to-Work Grant Program Implementation Team.

[FR Doc. 98–3587 Filed 2–11–98; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL CAPITAL PLANNING COMMISSION

Memorandum of Understanding With The Peterson Companies L.C.

AGENCY: National Capital Planning Commission.

ACTION: Notice of amendments to memorandum of understanding.

SUMMARY: The National Capital Planning Commission (Commission) entered into a Memorandum of Understanding (MOU) with James T. Lewis Enterprises, Ltd. on May 7, 1985, relating to the PortAmerica development in Prince George's County, Maryland. [1] The original MOU was incorporated in Pub. L. 99–215. On April 7, 1988, the MOU was amended to allow for revisions in the Conceptual Site Plan (CSP). On February 1, 1990, the second MOU was amended to allow for revisions in the Conceptual Site Plan (CSP) for the Waterfront Parcel. The third amended MOU was approved by the Commission on April 5, 1990, clarifying the permitted height and treatment of architectural features and uninhabited mechanical penthouses. The MOU approved by the Commission on January 8, 1998, in addition to recognizing the new developer, permits flexibility in the provision of green area and shoreline stabilization, and the alignment of trails, particularly along and adjacent to the shoreline of Smoot Bay. These changes are necessary to facilitate the filing of a revised Conceptual Site Plan to Prince George's County by the new Developer, The Peterson Companies L. C., reflecting changes in use and activities for the project. Specifically, the new uses contemplated by the Peterson Companies involve a change from residential to commercial waterfront development with entertainment, retail, restaurant and hospitality venues in accordance with Prince George's County Council Bill No. CB–44–1997.

FOR FURTHER INFORMATION CONTACT: Sandra H. Shapiro, General Counsel, National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Washington, DC 20576, telephone (202)482–7223.

SUPPLEMENTARY INFORMATION: The parties agree to the following text amendments: *Developer* in the *DEFINITIONS* Section, and *Preservation of Green Area Along Shoreline, Other Green Areas, Hiker Bike Trail,* and *Shoreline Stabilization* in the *RESTRICTIONS* Section. In addition a

[1] Published at 53 FR 6209, March 1, 1988, amended 55 FR 14498, April 18, 1990, and corrected at 55 FR 21674, May 25, 1990.

footnote has been added for *RESTRICTIONS;* Provision 3, *Other Green Areas* in the *RESTRICTIONS* Section has been deleted, and the provisions that follow have been renumbered accordingly; and the signatories have been changed to reflect the heads of the two agreeing parties.

The text amendments are as follows:

Footnote to *RESTRICTIONS:* The language in this MOU will be further amended upon Commission review of updated development plans, including the incorporation of revised maps for the new project. This Fourth Amendment to the MOU has been requested by the new Developer, to facilitate its schedule for financing and filing an appropriate application for review by the County. These amendments are intended to achieve that purpose. The Commission will act on the substance of the Developer's proposal upon receipt of an appropriate submission including a revised conceptual site plan. Nothing in this Fourth Amendment restricts NCPC's authority regarding its review or action on this project.

Developer: The Peterson Companies L.C., its successor and assigns.

2. *Green Area Along Waterfront:* The Developer shall incorporate green areas, to the maximum extent practical, along the waterfront and throughout the Waterfront Parcel. The primary focus of the green area shall be to break up continuous linear views of hardscape, structures and buildings. A justification for the percentage of green area proposed will accompany the Commission's review of the Developer's revised Conceptual Site Plan for the property. Green areas within 98 feet of the new shoreline generally extending from the northern boundary of the Gudelsky Tract to Rosier Point immediately east of the proposed restaurant shall not contain any buildings or structures, except that, between 85 feet and 98 feet from the new shoreline, unenclosed building appurtenances, such as porches, steps and awnings, may be constructed. The approximately 3 acre ''Rosalie Island'' site shall not be considered green area.

4. *Trails:* The Developer will dedicate or grant easements for continuous public trails, a significant portion of which shall be located along the waterfront, that will permit future connections with proposed trails, including the Potomac Heritage Trail, along the Potomac River north and south of Smoot Bay.

10. *Shoreline Stabilization:* Subject to the requirements of the Corps, the Developer shall retain the right to stabilize the shoreline by creating a bulkhead, revetment, and/or other means along the entire shoreline, as may be necessary according to sound engineering practice. Wherever practicable, the Developer will maintain or provide trees, shrubs and other landscaping behind the entire shoreline protection elements.

Sandra H. Shapiro,

General Counsel.

[FR Doc. 98–3602 Filed 2–11–98; 8:45 am]

BILLING CODE 7502–02–P

NATIONAL EDUCATION GOALS PANEL

Notice of Meeting

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

Date and Time: Saturday, February 21, 1998 from 9:30 a.m. to 11:00 a.m.

ADDRESS: J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW, SALON F, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ken Nelson, Executive Director, 1255 22nd Street, NW, Suite 502, Washington, DC 20037. Telephone (202) 724–0015.

SUMMARY: The National Education Goals Panel was established to monitor, measure and report state and national progress toward achieving the eight National Education Goals, and report to the states and the Nation on that progress.

Agenda Items: The meeting of the Panel is open to the public. Agenda items will include: 1) Panel discussion and action on Standards Implementation policy statements; 2) the release of two new publications, *Ready Schools and Principles and Recommendations for Early Childhood Assessment* which will be presented by Sharon Lynn Kagan, Yale Bush Center, and Lorrie Shepard, University of Colorado at Boulder; and 3) the Panel will discuss policy recommendations for Early Childhood Assessment.

Dated: February 6, 1998.

Ken Nelson,

Executive Director, National Education Goals Panel.

[FR Doc. 98–3510 Filed 2–11–98; 8:45 am]

BILLING CODE 4010–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking Infrastructure & Research Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure & Research (1207).

Date and Time: March 4, 1998; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1175, Arlington, VA 22230.

Type of Meetings: Closed.

Contact Person: Darleen Fisher, Program Manager, CISE/ANIR, Room 1175, National Science Foundation 4201 Wilson Boulevard, Arlington, VA 22230 (703) 306–1950.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted for the Special Projects Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–3554 Filed 2–11–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking Infrastructure & Research; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period March 3 through 5, 1998, the Special Emphasis Panel in Advanced Networking Infrastructure & Research (1207) will be holding panel meetings to review and evaluate research proposals.

Times: 8:30 to 5:00 p.m. each day.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Contact Person: Douglas Gatchell, Program Director, Division of Advanced Networking Infrastructure & Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA. 22230, telephone (703) 306–1949.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Connections to the Internet Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 522b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–3555 Filed 2–11–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Meeting

Special Emphasis Panel in Cross-Disciplinary Activities; Notice of Meeting In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities (#1193).

Date and Time: March 9, 13, and 16, 1998; 8:30 am—5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1150, Arlington, VA, 22230.

Type of Meeting: Closed.

Contact Person(s): William Agresti, Program Director, CISE/EIA, Room 1160, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advise and recommendations concerning proposals submitted to NSF for Financial support.

Agenda: To review and evaluate CISE Experimental Software Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–3553 Filed 2–11–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Mathematical and Physical Sciences (66).

Date and time: March 4, 1998—8:00 p.m.–10:00 p.m.; March 5–6, 1998—8:00 a.m.–5:00 p.m.

Place: Rm. 1235, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of meeting: Closed.

Contact person: Dr. Janet Osteryoung, Director, Division of Chemistry, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1845.

Purpose of meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Division of Chemistry.

Reason for closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: February 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–3556 Filed 2–11–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics.

Date and time: March 2, 1998 from 8:00 a.m. to 5:00 p.m., Rm. 320.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Barry Schneider, Program Director for Atomic, Molecular and Optical Plasma Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1890.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to the NSF Plasma Physics Program.

Agenda: To review and evaluate proposals for the NSF Plasma Physics Program as part of the selection process for awards.

Reason for closing: The project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary date for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–3552 Filed 2–11–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

In the Matter of Omaha Public Power District; Fort Calhoun Station, Unit No. 1; Exemption

I

The Omaha Public Power District (OPPD) is the holder of Facility Operating License No. DPR–40 for the Fort Calhoun Station, Unit No. 1 (FCS) which authorizes operation of the Fort Calhoun Station, Unit No. 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of one pressurized-water reactor at the licensee's site located in Washington County, Nebraska.

II

Section 70.24 of Title 10 of the Code of Federal Regulations, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and provides that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10

CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The SNM that could be assembled into a critical mass at FCS is in the form of nuclear fuel. In addition, the quantity of SNM other than fuel that is stored on site in any given location is small enough to preclude achieving a critical mass. As set forth below, the Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at FCS.

By letter dated August 29, 1997, as supplemented by letter dated October 23, 1997, the licensee requested an exemption from the requirements of 10 CFR 70.24 in its entirety for FCS. The licensee proposes to handle and store unirradiated fuel without having a criticality monitoring system with the sensitivity required by 10 CFR 70.24.

The basis for the staff to determine that inadvertent or accidental criticality is extremely unlikely can be established through compliance with the FCS Technical Specifications, the geometric spacing of fuel assemblies in the new fuel storage racks and spent fuel storage pool, and administrative controls imposed on fuel handling procedures.

SNM, as nuclear fuel, is stored in the new fuel storage rack and in the spent fuel pool. The spent fuel pool is used to store irradiated fuel under water after its discharge from the reactor and new (unirradiated) fuel prior to loading into the reactor. New fuel is stored in the new fuel storage rack in a dry condition.

SNM is also present in the form of excore fission chamber detectors and startup neutron sources. The small quantity of SNM present in these latter items precludes an inadvertent criticality.

The spent fuel pool is designed to store the fuel in a geometric array using a solid neutron absorber that precludes criticality. The effective neutron multiplication factor, k_{eff}, is maintained less than or equal to 0.95 by the solid neutron absorber for fuel enriched to 4.5 wt% U–235. Although soluble boron is maintained in the spent fuel pool, no credit is taken for it in determining k_{eff}.

The new fuel storage racks may be used to receive and store new fuel in a dry condition upon arrival onsite and prior to loading in the reactor or spent fuel pool. The spacing between new fuel assemblies and the solid neutron absorbers in the storage racks is sufficient to maintain the dry array in a subcritical condition. The new fuel storage rack is located at an elevation of 18.75 feet above the main floor which provides adequate drainage and precludes flooding. Because no fire protection sprinkler system exists in this area, there is no source of low-density aqueous foam optimum moderation. The current approved maximum enrichment of 4.5 wt% U–235 for the new fuel assemblies results in a maximum k_{eff} of less than 0.90 under dry conditions.

Nuclear fuel is moved between the NRC-approved shipping containers, the new fuel storage racks, the reactor vessel, and the spent fuel pool to accommodate refueling operations. In all cases, fuel movements are procedurally controlled and designed to preclude conditions involving criticality concerns. For example, during new fuel receipt inspection, FCS fuel handling procedures allow a maximum of two fuel assemblies to be in the inspection stands in the receipt area (out of the shipping container and not in the new fuel storage rack). However, when installed in the inspection stands, both assemblies have an edge-to-edge separation distance in excess of 14 feet. This geometric spacing is well in excess of that maintained by the NRC-approved shipping container (approximately 3 inches). There are no sprinklers in the new fuel receipt/storage room and the use of fire fighting equipment is very unlikely since there are no combustible materials permanently stored in this room. Even if fire suppression water were introduced into the room, sufficient drainage exists to preclude potential moderation of new fuel assemblies. Therefore, because of the large physical separation of new fuel assemblies and the extremely unlikely event of any potential moderation, there is sufficient assurance that k_{eff} remains less than 0.95, thus precluding criticality.

FCS was licensed to the 70 General Design Criteria for Nuclear Power Plant Construction published as drafts in the **Federal Register** (32 FR 10213) on July 11, 1967. Draft Criterion 18, Monitoring Fuel and Waste Storage, was met. As noted in Section 11.2.3 and Appendix G of the FCS Updated Safety Analysis Report, area monitoring of dose rates is supplied in the containment and auxiliary buildings, including the fuel storage areas. Local and control room alarms and indicators (not necessarily meeting the 10 CFR 70.24 sensitivity requirements) are provided to alert personnel to take appropriate action in the unlikely event of excessive radiation levels due to accidental criticality.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. In view of the above information, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in SNM handling or storage areas at FCS. Criticality is precluded with the present design configuration, Technical Specification requirements, administrative controls, and the fuel handling equipment and procedures. In addition, as described above, the licensee has radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensee's adherence to General Design Criterion 63, constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Omaha Public Power District an exemption as described in Section II above from 10 CFR 70.24, ''Criticality Accident Requirements'' for the Fort Calhoun Station.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (63 FR 5821).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 6th day of February 1998.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–3582 Filed 2–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 98th meeting on February 24–26, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 3, 1997 (62 FR 63970).

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows: Tuesday, February 24, 1998—8:30 a.m. until 6:00 p.m.; Wednesday, February 25, 1998—8:30 a.m. until 6:00 p.m.; Thursday, February 26, 1998—8:30 a.m. until 4:00 p.m.

A. Meeting With NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards (NMSS)

The Committee will meet with the Director to discuss recent developments within the division such as developments at the Yucca Mountain project, rules and guidance under development, available resources, and other items of mutual interest.

B. Viability Assessment

Representatives of the Department of Energy's Yucca Mountain Project office will discuss the status of the viability assessment being performed for the proposed high-level waste repository. The purpose of this effort is to make an informed assessment of the viability of licensing and constructing a repository at Yucca Mountain, NV.

C. Risk-Informed and, Where Appropriate, Performance-Based Regulation

The Committee will review a proposed Commission paper on the use of risk-informed and, where appropriate, performance-based and less prescriptive regulation by NRC's Office of Nuclear Materials Safety and Safeguards.

D. Implementing Rule for the Proposed Yucca Mountain Repository

The Committee will review the NRC staff's proposed strategy for development of regulations governing disposal of high-level waste at the proposed Yucca Mountain, NV high-level waste repository.

E. Nuclear Waste Related Research

The Committee will review various aspects of waste related research that is underway or planned in preparation of sending a report to the Commission. Participants may include representatives of the NRC staff, the nuclear industry, and possibly individuals representing foreign programs.

F. Preparation of ACNW Reports

The Committee will discuss planned reports, including comments on the NRC/NMSS staff's high-level waste Issue Resolution Status Report; nuclear waste research activities; risk-informed and, where appropriate, performance-based regulation; the implementing rule for the proposed Yucca Mountain repository; and other topics discussed during this and previous meetings as the need arises.

G. Committee Activities/Future Agenda

The Committee will evaluate topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

H. Miscellaneous

The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 2, 1997 (62 FR 46382). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 a.m. and 5:00 p.m. EST.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: February 6, 1998.

John C. Hoyle,

Acting Advisory Committee Management Officer.

[FR Doc. 98–3526 Filed 2–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic and Severe-Accident Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic and Severe-Accident Phenomena will hold a meeting on February 18, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, February 18, 1998—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the elements of the NRC Office of Nuclear Regulatory Research Programs pertaining to thermal-hydraulics, in support of the ACRS report to the Commission on Safety Research. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee

Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: February 6, 1998.

Medhat El-Zeftawy,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–3527 Filed 2–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on February 19 and 20, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, February 19, 1998—8:30 a.m. until the conclusion of business. Friday, February 20, 1998—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the proposed final Standard Review Plan (SRP) Sections and Regulatory Guides for risk-informed, performance-based regulation including individual applications for graded quality assurance, technical specifications, and inservice testing. The Subcommittee will review the matter included in the Staff Requirements Memorandum dated October 16, 1997, regarding elevation of core damage frequency to a fundamental goal and possible revision to the Commission's Safety Goal Policy Statement. The Subcommittee will also review industry-initiated risk-informed pilots related to the development of full-scope probabilistic risk assessments (PRAs) and the use of quantitative health objectives. The Subcommittee may also discuss staff and industry activities in the area of performance-based regulation and efforts to develop standards for PRA quality. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: February 6, 1998.

Medhat El-Zeftawy,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–3528 Filed 2–11–98; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the reinstatement of the National Agency Check Questionnaire for Peace Corps Volunteer Background Investigation (PC–5). Section 22 of the Peace Corps Act (22 U.S.C. 2501 et seq.) mandates that ''all persons employed or assigned to duties under the Act shall be investigated to insure employment or assignment is consistent with national interest in accordance with standards and procedures established by the President.'' A copy of the information collection may be obtained from Stuart Moran, Office of Volunteer Recruitment and Selection, United States PEACE CORPS, 1990 K Street, NW, Washington, DC 20526. Mr. Moran may be contacted by telephone at (202) 606–2080. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; 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; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Comments on this form should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: National Agency Check Questionnaire.

Need for and Use of This Information: Peace Corps needs this information in order to process applicants for Volunteer service. The information is used to insure that potential Volunteer's assignment is consistent with the national interest in accordance with the standards and procedures established by the President.

Respondents: Individuals who have applied for Peace Corps service and have been nominated to a specific program.

Respondents Obligation To Reply: Required to obtain benefits.

Burden On the Public

a. Annual reporting burden: 2,500 hrs.

b. Annual record keeping burden: 0 hrs.

c. Estimated average burden per response: 15 minutes.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 10,000.

f. Estimated cost to respondents: $4.03.

This notice is issued in Washington, DC, on February 9, 1998.

William C. Piatt,

Associate Director for Management.

[FR Doc. 98–3542 Filed 2–11–98; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) this notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the reinstatement of the Peace Corps Volunteer Application. A copy of the information collection may be obtained from Stuart Moran, Office of Volunteer Recruitment and Selection, United States PEACE CORPS, 1900 K Street, NW, Washington, DC 20526. Mr. Moran may be contacted by telephone at (202) 606–2080. The Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; 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; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on this form should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Volunteer Application.

Need for and Use of this Information: Peace Corps needs this information in order to process applicants for Volunteer service. The information is used to determine qualifications and potential for placement of applicants.

Respondents: Individuals who apply for Peace Corps service.

Respondents Obligation To Reply: Required to obtain benefits.

Burden on the Public

a. Annual reporting burden: 30,000 hrs.

b. Annual record keeping burden: 0 hrs.

c. Estimated average burden per response: 3 hrs.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 10,000.

f. Estimated cost to respondents: $38.98.

This notice is issued in Washington, DC on February 9, 1998.

William C. Piatt,

Associate Director for Management.

[FR Doc. 98–3543 Filed 2–11–98; 8:45 am]

BILLING CODE 6051–01–M

POSTAL SERVICE

Information Based Indicia Program (IBIP)

AGENCY: Postal Service.

ACTION: Announcement of public meeting on IBIP.

SUMMARY: The Postal Service will be hosting another Public Meeting in conjunction with IBIP. The purpose of the meeting will be to present the current status and an orientation regarding IBIP. It will be held Thursday March 12, 1998, at the Las Vegas Hilton, 3000 Paradise Road, Las Vegas, NV 89109–1283.

DATES: Reservations for this meeting may be made by calling Ed Zelickman or Dana Brown at (202) 268–6794. Reservations may be made until March 6, 1998; however, we encourage you to call earlier as there is limited seating available.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–3509 Filed 2–11–98; 8:45 am]

BILLING CODE 7710–12–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3056]

State of Florida

Manatee County and the contiguous Counties of DeSoto, Hardee, Hillsborough, Polk, and Sarasota in the State of Florida constitute a disaster area as a result of damages caused by severe storms and flooding that occurred on January 23, 1998. Applications for loans for physical damage may be filed until the close of business on April 2, 1998, and for economic injury until the close of business on October 30, 1998 at the address listed below or other locally announced locations:

Small Business Administration,
Disaster Area 2 Office,
One Baltimore Place,
Suite 300,
Atlanta, GA 30308

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 305606 and for economic injury the number is 972700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 30, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–3558 Filed 2–11–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3052]

State of Maine; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated January 25, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on January 5, 1998 and continuing through January 25, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 16, 1998 and for economic injury the deadline is October 15, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 30, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–3557 Filed 2–11–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3054]

State of New Hampshire; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated January 29, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on January 7, 1998, and continuing through January 25, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 25, 1998, and for economic injury the deadline is October 24, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 30, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–3559 Filed 2–11–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Shipping Coordinating Committee; Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on Tuesday, March 24, 1998, at 9:30 AM in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the forty first session of the Marine Environment Protection Committee (MEPC 41) of the International Maritime Organization (IMO). MEPC 41 will be held from March 30–April 3, 1998. Proposed U.S. positions on the agenda items for MEPC 41 will be discussed.

The major items for discussion for MEPC 41 will begin at 9:30 AM and include the following:

a. Prevention of pollution from offshore oil and gas activities;

b. Identification and protection of Special Areas and Particularly Sensitive Sea Areas;

c. Interpretation and amendments of MARPOL 73/78 and related Codes;

d. Follow-up to the Conference on prevention of air pollution from ships;

e. Harmful aquatic organisms in ballast water;

f. Harmful effects of the use of antifouling paints for ships;

g. Promotion of implementation and enforcement of MARPOL and related codes, including the development of an IMO manual on MARPOL. How to enforce it;

h. Implementation of the Oil Pollution Preparedness, Response and Cooperation Convention (OPRC), and;

i. Irradiated Nuclear Fuel Code related matters.

Members of the public may attend this meeting up to the seating capacity of the room. For further information or documentation pertaining to the SPMP meeting, contact Lieutenant Commander Ray Perry, U.S. Coast Guard Headquarters (G–MSO–4), 2100 Second Street, SW, Washington, DC 20593–0001; Telephone: (202) 267–2714.

Dated: January 29, 1998.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 98–3538 Filed 2–11–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Montgomery County, Maryland

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Montgomery County, Maryland.

FOR FURTHER INFORMATION CONTACT: Ms. Renee Sigel, Planning, Research, and Environment Team Leader, Federal Highway Administration, The Rotunda Suite 220, 711 West 40th Street, Baltimore, Maryland 21211. Telephone: (410) 962–4440.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve MD 97 in Montgomery County, Maryland. Proposed alternates will address congestion and safety problems on existing MD 97 in the historic Town of Brookeville. The project limits are from Gold Mine Road to north of Holiday Drive, a distance of approximately two miles.

Alternatives under consideration include taking no action and constructing bypasses around Brookeville. Five bypass alternatives, proposing a two lane access controlled roadway on new location, have been retained for detailed study. Four alternatives would bypass Brookeville to the west and one would bypass Brookeville to the east.

Alternatives to improve the existing alignment through Brookeville were initially considered but were eliminated due to the resulting adverse effects on the historic district.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens and citizen groups who have previously expressed or are known to have an interest in this proposal. It is anticipated that a Public Hearing will be held in 1998. The draft EIS will be available for public and agency review and comment prior to a Public Hearing. Public notice will be given of the availability of the Draft EIS for review and of the time and place of this hearing. An Alternates Public Meeting was held in May 1996. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestion are invited from all interested parties. Comments or questions concerning these proposed actions and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Issued on: February 3, 1998.

Renee Sigel,

Planning, Research and Environment Team Leader, Baltimore.

[FR Doc. 98–3590 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 98–2]

Hazardous Materials in Intrastate Commerce: Public Meetings Related to Implementation and Compliance

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces a series of four public meetings to provide information and accept questions regarding regulations issued under Docket HM–200, ''Hazardous Materials in Intrastate Transportation,'' published in the **Federal Register** on January 8, 1997 (62 FR 1208). The regulations require that most intrastate shippers and carriers comply with the Hazardous Materials Regulations (HMR) and provide a number of exceptions to reduce regulatory burdens. The meetings are intended to assist in understanding and complying with the new requirements.

DATES: *Public Meetings.* Public meetings will be held as follows:

(1) March 26, 1998 in Lincoln, Nebraska;

(2) April 7, 1998 in Irving, Texas;

(3) April 22, 1998, in Decatur, Georgia; and

(4) May 5, 1998, in Seattle, Washington.

ADDRESSES: *Meetings.* See Supplementary Information for specific times, locations and agendas.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590–0001. E-mail address: rules@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

On January 8, 1997, RSPA published a final rule in the **Federal Register** (62 FR 1208) which amended the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to expand the scope of the regulations to include most intrastate transportation of hazardous materials. RSPA also provided exceptions to the regulations to reduce the impact on persons newly subject to the HMR and others. Exceptions for agricultural operations are found in § 173.5; exceptions for materials of trade (MOTS) are found in § 173.6; and exceptions for non-specification packagings for flammable liquid petroleum products are found in § 173.8. As part of an outreach program to assist the public in understanding and complying with these regulations, RSPA is holding four public meetings.

Conduct of Meetings

Meetings will be informal, intended to produce dialogue between agency personnel and those persons affected by the expansion of the scope of the HMR.

Meeting Schedule and Agendas

The public meetings will be held at the following locations:

(1) March 26, 1998, from 9 a.m. to 12 noon in Lincoln, Nebraska, Best Western Airport Inn, I–80 and Airport Exit #399, (402) 475–9541;

(2) April 7, 1998, from 9 a.m. to 12 noon in Irving, Texas, Wilson World Hotel, 4600 West Airport Freeway, (972) 513–0800;

(3) April 22, 1998, from 9 a.m. to 12 noon in Decatur, Georgia, Holiday Inn Hotel & Conference Plaza, 130 Clairemont Avenue, (404) 371–0204; and

(4) May 5, 1998, from 9 a.m. to 12 noon in Seattle, Washington, Double Tree Hotel, 18470 Pacific Highway South, (206) 439–6130.

If there is interest, the meetings will resume after lunch.

Issued in Washington, DC on February 6, 1998 under authority delegated in 49 CFR.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–3562 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–502 and AB–503 (Sub-No. 1X)]

Bootheel Rail Properties, Inc.—Abandonment Exemption—in Pemiscot and Dunklin Counties, MO, and Bootheel Regional Rail Corporation—Discontinuance Exemption—in Pemiscot and Dunklin Counties, MO

On January 23, 1998, Bootheel Rail Properties, Inc. (BRP) and Bootheel Regional Rail Corporation (BRRC) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for BRP to abandon and BRRC to discontinue service over a line of railroad known as the Hayti-Kennett Branch, extending from milepost 212.73, near Hayti, MO, to milepost 230.00, near Kennett, MO, a distance of 17.27 miles in Pemiscot and Dunklin Counties, MO. The line traverses U.S. Postal Service ZIP Codes 63851, 63857, 63871, and 63827. There are no agency stations located on the line.

The line does not contain federally granted rights-of-way. Any documentation in BRP's possession will be made available promptly to those requesting it. Because BRP and BRRC are proposing to abandon and discontinue service respectively over their entire lines, no labor conditions will be imposed.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 13, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $900 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than March 4, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–503 (Sub-No. 1X) and AB–502 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K

Street, N.W., Washington, DC 20423–0001; and (2) Karl Morell, Suite 225, 1455 F Street, N.W., Washington, DC 20005.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695].

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: February 5, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–3546 Filed 2–11–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–532X]

The Cincinnati Terminal Railway Co.[1] (Indiana & Ohio Railway Co., Successor)—Discontinuance of Service Exemption—In Cincinnati, Hamilton County, OH

The Cincinnati Terminal Railway Company (CTER) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances,* to discontinue service under a lease that has been terminated.[2] The lease was limited to certain overhead movements over a line of railroad owned by the Norfolk and Western Railway Company (NW) that traveled the entire Riverfront Running Track, extending between Survey Station 84+80± and Survey Station 4+20± (former milepost LM–119+1756 feet±), a distance of approximately 1.5 miles, in Cincinnati, Hamilton County, OH.[3] The line traverses United States Postal Service Zip Codes 45202 and 45203. There are no stations on the line.

CTER has certified that: (1) No local traffic has moved via CTER pursuant to the lease rights for at least 2 years; (2) any overhead traffic that previously moved over the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[4]

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on March 14, 1998,[5] unless stayed pending reconsideration. Petitions to stay that do not involve a formal expression of intent to file an OFA under 49 CFR 1152.27(c)(2),[6] must be filed by February 23, 1998. Petitions to reopen must be filed by March 4, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morrell, Ball Janik, LLP, 1455 F Street, NW, Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Decided: February 6, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–3619 Filed 2–11–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–167 (Sub–No. 1180X)]

Consolidated Rail Corporation—Discontinuance of Trackage Rights Exemption—in Cincinnati, Hamilton County, OH

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Trackage Rights,* for the discontinuance of trackage rights over Norfolk and Western Railway Company's entire Riverfront Running Track, extending from a Point A near the Oasis Block Station to Point B in the southern line of Front Street near its intersection with Smith Street, a distance of approximately 1.5 miles, in Cincinnati, Hamilton County, OH.[1] The line traverses United States Postal Service ZIP Codes 45202 and 45203. There are no stations on the line.[2]

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[1] The Cincinnati Terminal Company was merged into IORY in a transaction that was the subject of a notice of exemption in *RailTex, Inc., Indiana & Ohio Rail Corp., Cincinnati Terminal Railway Company, Indiana and Ohio Railroad, Inc., Indiana & Ohio Railway Company and Indiana & Ohio Central Railroad, Inc.—Corporate Family Transaction Exemption,* STB Finance Docket No. 33530 (STB served Jan. 9, 1998). We have accepted the notice of exemption as filed with an amended caption to reflect CTER's merger into Indiana and Ohio Railway Company because no party will be prejudiced and because the lease had terminated while CTER was still the party in interest.

[2] *See The Cincinnati Terminal Railway Co.—Lease Exemption—Norfolk and Western Railway Company,* Finance Docket No. 32519 (ICC served Aug. 31, 1994). The lease, dated June 24, 1994, became effective on July 1, 1994, and was later terminated by NW on May 31, 1996, effective July 1, 1996.

[3] Concurrent filings were made in: STB Docket No. AB–290 (Sub-No. 184X), *Norfolk and Western Railway Company—Abandonment Exemption—In Cincinnati, Hamilton County, OH,* STB Docket No. AB–167 (Sub-No. 1180X), *Consolidated Rail Corporation—Discontinuance of Trackage Rights Exemption—in Cincinnati, Hamilton County, OH;* and STB Docket No. AB–31 (Sub-No. 30), *Grand Trunk Western Railroad Incorporated—Adverse Discontinuance of Trackage Rights Application—A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH.*

[4] No environmental or historical documentation is required here, pursuant to 49 CFR 1105.6(b)(3).

[5] Because this is a discontinuance proceeding and not an abandonment, there is no need to provide for trail use/rail banking or public use conditions.

[6] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

[1] Conrail had acquired the trackage rights pursuant to the Final System Plan under the Regional Rail Reorganization Act of 1973.

[2] Concurrent filings were made in: STB Docket No. AB–290 (Sub-No. 184X), *Norfolk and Western Railway Company—Abandonment Exemption—In Cincinnati, Hamilton County, OH;* STB Docket No. AB–532X, *The Cincinnati Terminal Railway Company (Indiana & Ohio Railway Company,*

Continued

Conrail has certified that: (1) No local traffic has moved over the line via Conrail pursuant to the trackage rights for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.12 (newspaper notice) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[3]

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on March 14, 1998,[4] unless stayed pending reconsideration. Petitions to stay that do not involve a formal expression of intent to file an OFA under 49 CFR 1152.27(c)(2),[5] must be filed by February 23, 1998. Petitions to reopen must be filed by March 4, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John J. Paylor, Consolidated Rail Corporation, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Decided: February 6, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–3620 Filed 2–11–98; 8:45 am]

BILLING CODE 4915–00–P

Successor)—Discontinuance of Service Exemption—In Cincinnati, Hamilton County, OH; and STB Docket No. AB–31 (Sub-No. 30), *Grand Trunk Western Railroad Incorporated—Adverse Discontinuance of Trackage Rights Application—A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH.*

[3] No environmental or historical documentation is required here, pursuant to 49 CFR 1105.6(b)(3).

[4] Because this is a discontinuance proceeding and not an abandonment, there is no need to provide for trail use/rail banking or public use conditions routinely provided for in abandonment proceedings.

[5] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–31 (Sub-No. 30)]

Grand Trunk Western Railroad Incorporated—Adverse Discontinuance of Trackage Rights Application—A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH

On January 23, 1998, the Norfolk and Western Railway Company (NW) filed an application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (Board) order the discontinuance, or find that the public convenience and necessity require and permit the discontinuance, of the limited overhead trackage rights asserted to be held by Grand Trunk Western Railroad Incorporated (GTW) over the entire Riverfront Running Track, which is described in the agreement granting those rights, as ''that portion of the line of NW through Cincinnati, OH, from the first switch west of Oasis Block Station to a connection with the Southern Railway in the vicinity of Front and Smith Streets * * * a distance of 1.6 miles,'' in Cincinnati, Hamilton County, OH.[1] The line is about 1.6 miles and no more than 2.2 miles in length. The line has no stations, and traverses United States Postal Service ZIP Codes 45202 and 45203.[2]

NW states that the line is out of service, but that GTW declines to file or concur in a notice of exemption because it claims to have assigned its trackage right to Indiana & Ohio Railway Company (IORY).[3] Applicant has asked the Board to expedite handling of the matter due to the fact that the line is out of service and due to NW's stated intent to transfer its interest in the line to the City of Cincinnati for public purposes.

NW has petitioned the Board to waive the informational or procedural requirements of discontinuance applications that do not apply to a notice of exemption. The waiver requests as to information will be granted in a separate decision to be served concurrently with this notice. The request for modification of the schedule for filing comments will be denied. NW also requests exemption from the provisions of 49 U.S.C. 10904 and 10905. Those exemption requests will be considered by the Board in the final decision on the merits of the application.

GTW filed a petition to reject the application. The petitioner argues that the application should be rejected as prematurely filed. GTW asserts that it has assigned the trackage rights to IORY. The petition to reject argues that a grant of this application would amount to an adjudication of the dispute between NW and GTW over whether it lawfully assigned the rights to IORY. GTW cites the trackage rights agreement, which provides for the resolution of disputes arising under the agreement by arbitration. The petitioner states that it has invoked arbitration.

In further support of its argument that the application is premature, GTW says that the application should not have been filed until the various petitions for waiver filed by NW had been acted upon. Finally, GTW argues that the NW application is defective.

The Board will address the relevance of and, if appropriate, the merits of GTW's and NW's arguments as to the assignment of the trackage rights in the decision on the application. In an application by a third party for a determination that the public convenience and necessity permits a line to be discontinued or abandoned, the issue before the Board is whether the public interest requires that the line in question be retained as part of the national rail system. The question of the ownership of the line is relevant chiefly as it pertains to the question of whether the public is better served by the maintenance or discontinuance of the rights and the service they afford.

By granting a third party application, the Board withdraws its primary jurisdiction over the line. Questions of

[1] GTW acquired its interest in the agreement through the automatic assignment to GTW, as successor to the Detroit, Toledo and Ironton Railroad Company. *See Norfolk & W. Ry. Co.—Control—Detroit, T. & I. R. Co.,* 360 I.C.C. 498 (1979) and 363 I.C.C. 122 (1980).

[2] Concurrent filings were made in: STB Docket No. AB–290 (Sub-No. 184X), *Norfolk and Western Railway Company—Abandonment Exemption—In Cincinnati, Hamilton County, OH;* STB Docket No AB–532X, *The Cincinnati Terminal Railway Company (Indiana & Ohio Railway Company, Successor)—Discontinuance of Service Exemption—In Cincinnati, Hamilton County, OH;* and STB Docket No. AB–167 (Sub-No. 1180X), *Consolidated Rail Corporation—Discontinuance of Trackage Rights Exemption—in Cincinnati, Hamilton County, OH.*

[3] Because the real party of interest here is in question, both GTW and IORY are requested to participate in this proceeding.

the disposition of the line, including the adjudication of various claims of ownership or other rights and obligations, are then left to state or local authorities; *Kansas City Pub. Ser. Frgt. Operation—Exempt.—Aban.*, 7 I.C.C. 2d 216 (1990). It should be noted that, whenever the Board or its predecessor, the Interstate Commerce Commission, has granted abandonment or discontinuance authority, whether by application of a third party or otherwise, the agency finds that the public 9convenience and necessity supports the abandonment or discontinuance of a specific line by a specified carrier.

The parties may address this issue further in their comments and the replies thereto.

GTW correctly notes that requests for waivers are typically filed before the application drawn in reliance on those waivers is filed. But in filing its application contemporaneously with the waivers, NW has merely run the risk that the waivers will be denied in whole or part and it will have wasted time and effort in filing an application based on them. Grants of petitions for waiver of the filing of the materials required in typical abandonment applications in applications filed by third parties are customary. The regulations require information intended to help the Board decide whether a particular line or service is losing money. That is typically not the issue in third party applications. It is not the issue here, where no service has been provided in recent years. We have denied NW's requests to shorten the procedural schedule or to ''waive'' the statutorily mandated OFA procedures.

The procedure NW chose in filing its waiver requests is no reason to reject its application. Nor is GTW's catchall assertion that the application is defective.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The applicant's entire case in chief for abandonment and discontinuance of service was filed with the application.

The interest of railroad employees will be protected by the conditions in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

The line has not appeared on the system diagram maps (SDM) or been included in the narrative in category 1. The Interstate Commerce Commission (ICC) has found that the SDM requirement, while imposed by statute, is not necessary in the context of an adverse abandonment, where the line has been out of service for many years. *See Tri-County Metropolitan Transportation District of Oregon—Abandonment—A line of Burlington Northern Railroad Company in Washington County, OR,* ICC Docket No. AB–6 (Sub-No. 348) (ICC served Mar. 4, 1993).

Any interested person may file with the Board written comments concerning the proposed adverse discontinuance or protests (including the protestant's entire opposition case), by March 10, 1998. Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use requests are not appropriate. Such requests will be considered in the abandonment proceeding referenced in footnote 2. Likewise, no environmental or historical documents are required here under 49 CFR 1105.6(c)(6).

Persons opposing the proposed adverse discontinuance who wish to participate actively and fully in the process should file a protest by March 10, 1998. Persons who may oppose the discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments by March 10, 1998. Parties seeking information concerning the filing of protests should refer to § 1152.25. The due date for applicant's reply is March 25, 1998.

All filings in response to this notice must refer to STB Docket No. AB–31 (Sub-No. 30) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) James R. Paschall, Norfolk and Western Railway Company, Three Commercial Place, Norfolk, VA 23510–2191; Robert P. vom Eigen, Hopkins & Sutter, 888 16th Street, NW., Washington, DC 10006; Mr. S. A. Cantin, Q.C., System General Counsel, Canadian National, 935 de La Gauchetiere St. West, Montreal, QC H3B 2M9; and Karl Morrell, Ball Janik, LLP, 1455 F Street, NW., Washington, DC 20004. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the adverse discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning the abandonment/discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

A copy of the application will be available for public inspection at NW's agency station at 1400 Gest Street, Cincinnati, OH 45203 ((513) 977–3284). The carrier shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

Decided: February 6, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–3621 Filed 2–11–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 184X)]

Norfolk and Western Railway Co.—Abandonment Exemption—In Cincinnati, Hamilton County, OH

On January 23, 1998, Norfolk and Western Railway Company (NW) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–10905 [1] to abandon a segment of a line of railroad known as the Riverfront Running Track, between Oasis and Plum Street, a distance of approximately 1.5 miles, in Cincinnati, Hamilton County, OH.[2] The line traverses U.S. Postal Service Zip Codes 45202 and 45203. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

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[1] NW seeks exemptions from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905. Exemptions from 49 U.S.C. 10904–05 have been granted from time to time, but only when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.

[2] Concurrent filings were made in: STB Docket No. AB–532X, *The Cincinnati Terminal Railway Company (Indiana & Ohio Railway Company, Successor)—Discontinuance of Service Exemption—In Cincinnati, Hamilton County, OH;* and STB Docket No. AB–167 (Sub-No. 1180X), *Consolidated Rail Corporation—Discontinuance of Trackage Rights Exemption—in Cincinnati, Hamilton County, OH;* and STB Docket No. AB–31 (Sub-No. 30), *Grand Trunk Western Railroad Incorporated—Adverse Discontinuance of Trackage Rights Application—A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH.*

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 13, 1998.

Unless an exemption is granted, as sought, from the OFA provisions of 49 U.S.C. 10904, any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Unless an exemption is granted, as sought, from the public use provisions of 49 U.S.C. 10905, any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than March 4, 1998.[3] Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. 290 (Sub-No. 184X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001, and (2) James R. Paschall, Norfolk and Western Railway Company, Three Commercial Place, Norfolk, VA 23510–2191.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. (TDD for the hearing impaired is available at (202) 565–1695.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: February 6, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–3618 Filed 2–11–98; 8:45 am]

BILLING CODE 4915–00–P

[3] NW states that, since it has already agreed to transfer the line to the City of Cincinnati, NW will not negotiate with any party for transfer of the line for trail use.

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of Systems of Records

AGENCY: Departmnet of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending three systems of records notices to update the ''Access/Safeguards'' statements.

DATES: These amendments are effective on February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Bill Lanson, Legal Consultant, Compensation & Pension Service, Veterans Benefits Administration, (202) 273–7267; Celia Winter, Privacy Act Officer, Veterans Health Administration, (202) 273–6274.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs (VA) has decided, as a matter of policy, to provide direct, on-line, remote access to its automated medical treatment and benefits records to certain employees of the Veterans Health Administration (VHA) and the Veterans Benefits Administration (VBA) who need to have access to the information contained in the records in order for them to make decisions about veterans' benefits (medical care and other benefits) in a more timely and efficient manner.

VHA is responsible for the medical treatment of veterans and claimants, and maintains individually identified and retrieved records, both paper and electronic, reflecting the care and treatment rendered. VBA is responsible for determining entitlement to compensation and pension benefits for veterans and claimants under title 38, United States Code. VBA also maintains individually identified and retrieved paper and electronic records of this claims administration activity.

The status of a veteran's compensation, pension, retirement, and other benefits may be affected while the veteran is receiving hospitalization, domiciliary care, nursing home care, or other medical services. Information maintained by the VA medical centers often is relevant to determinations by VBA about these benefits. Similarly, there may be some change in a veteran's eligibility to receive medical care and treatment without charge. Information maintained by VBA often is pertinent to the ability of a VA medical center to make a determination on this matter.

In both situations, VBA and VHA personnel need timely access to the appropriate records in order to ensure that veterans receive the medical care or other title 38 benefits that they are entitled to receive as expeditiously as possible.

Historically, VBA and VHA exchanged necessary information to make these determinations by the appropriate, authorized employees at the VA medical center treating the veteran or at the VBA regional office administering the delivery of benefits to the veteran, by submitting a paper form to the other for the necessary records. The relevant portions of the medical treatment records or claims records were photocopied (and in the case of electronic medical records, printed out) and mailed back and forth between the medical center and the regional office.

VA replaced the use of paper forms for VBA to request copies of records with the AMIE (Automated Medical Information Exchange) software package. The use of AMIE allows regional offices to electronically request copies of the relevant veterans' medical records from the medical centers, particularly hospital admission and discharge reports, outpatient treatment reports and other patient care records. The medical center then provides either paper copies of the records or electronic reports if available. The use of AMIE greatly reduced the time it takes to exchange patient information between the medical centers and the regional offices, reduced the number of paper forms exchanged, provided better monitoring of the examination process, and, most importantly, allowed the veterans to receive benefits due them in a more timely and efficient manner.

VA medical centers currently maintain significant portions of their clinical records in electronic format on the computer system known as VISTA/DHCP (Veterans Information Systems Technology Architecture/Decentralized Hospital Computer Programs). Other clinical records are maintained in a variety of hardcopy forms, e.g., paper and X-ray film. VHA is eventually migrating all of its clinical records to an electronic environment. The electronic clinical records can be accessed within a medical center and downloaded or printed out by authorized VHA

personnel, such as the treating physician, as needed.

VA created the BDN (Benefits Delivery Network) HINQ (Hospital Inquiry) screen to allow VHA to request relevant treatment eligibility information from VBA on individual veterans. HINQ provides access to discrete electronically stored data fields containing VBA information that VA medical centers need to determine the care that can be provided to a veteran free of charge and that portion of care the veteran may be billed for. The use of HINQ also shortened the time necessary for VA medical centers to receive the information needed to ensure that veterans received the medical care due them without being billed.

VBA maintains standardized data fields on veterans in electronic form in addition to those accessible through HINQ. These VBA data fields are accessible to authorized VBA personnel through the VBA's BDN. VBA personnel can download or print the field from the BDN. VBA contemplates moving to an electronic claims record in the future.

VA has determined that direct, real-time, remote electronic access to veterans' electronic medical records maintained at VA medical centers by authorized VBA personnel for claims development and adjudication purposes should expedite the processing of veterans' claims by VBA, allowing veterans' to receive benefits due them in a more timely and efficient manner. Also, VA has determined that direct, real-time, remote electronic access to the BDN by authorized VHA personnel will result in a more timely and accurate determination of appropriate billing for medical care to veterans. When VBA moves to an electronic claims folder, it would be equally useful for VHA to have access to that electronic folder.

Accordingly, authorized VBA personnel will be provided direct, remote access to VHA clinical medical records maintained on the VISTA/DHCP computer systems at the medical centers for the purposes of reading and downloading veterans' medical records relevant to the development and adjudication of the veterans' claims, such as final hospital summaries and compensation and pension examination reports, to reduce claims' processing time. To the extent that medical records do not exist in electronic form, VBA will continue to use the AMIE software to request those records. Further, this policy supports providing VA medical centers with personal computers configured specifically for access to the BDN for health care eligibility verification. VHA personnel will be able to read and download data from the BDN, or any other databases later developed by VBA, as well as electronic claims records at some future time.

Therefore, VA is amending Access/Safeguards statements in the ''Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system'' portion of the following three systems of records notices: ''24VA136''—Patient Medical Records ''58VA21/22''—Compensation, Pension, Education and Rehabilitation Records ''38VA23''—Veterans and Beneficiaries Identification and Records Location Subsystem—VA

Approved January 29, 1998.

Togo D. West, Jr.,

Acting Secretary.

1. The system of records identified as 24VA136, ''Patient Medical Records—VA,'' published at 40 FR 38095, August 26, 1975, and amended at 40 FR 52125, November 7, 1975, 41 FR 2881, January 20, 1976, 41 FR 11631, March 19, 1976, 42 FR 30557, June 15, 1977, 44 FR 31058, May 30, 1979, 45 FR 77220, November 21, 1980, 46 FR 2766, January 12, 1981, 47 FR 28522, June 30, 1982, 47 FR 51841, November 17, 1982, 50 FR 11610, March 22, 1985, 51 FR 25968, July 17, 1986, 51 FR 44406, December 9, 1986, 52 FR 381, January 5, 1987, 53 FR 49818, December 9, 1988, 55 FR 5112, February 13, 1990, 55 FR 37604, September 12, 1990, 55 FR 42534, October 19, 1990, 56 FR 1054, January 10, 1991, 57 FR 28003, June 23, 1992, 57 FR 45419, October 1, 1992, 58 FR 29853, May 24, 1993, 58 FR 40852, July 30, 1993, and 58 FR 57674, October 26, 1993, is amended by revising paragraphs 2 through 6 of the safeguards statement, the entire storage statement and the system manager statement in the ''Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system'' as follows:

24 VA 136

SYSTEM NAME:

Patient Treatment Records—VA.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records (or information in records) are maintained on paper documents in the consolidated heath record at the last VA health care facility where care was rendered and at Federal records centers. Subsidiary record information is maintained at the various respective services within the health care facility (e.g., Pharmacy, Fiscal, Dietetic, Clinical Laboratory, Radiology, Social Work, Psychology, etc.) and by individuals, organizations, and/or agencies with whom VA has a contract or agreement to perform such services as VA may deem practicable. All or portions of the consolidated health record is stored or maintained on-line in VISTA or DHCP (Veterans Information Systems Technology Architecture or Decentralized Hospital Computer Program) computer systems in each VA health care facility and back-up computer files maintained at off-site locations, and may also be stored, in part, at VA Central Office, the National Institutes of Health, the VA Boston Development Center, Chief Information Officer Field Offices (CIOFOs), VA regional offices (VAROs), and the Austin Automation Center (AAC), Austin, Texas.

* * * * *

SAFEGUARDS:

* * * * *

2. Access to the VISTA or/and DHCP computer rooms within the health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in DHCP and VISTA systems may be accessed only by authorized VA employees. Access to file information is controlled at two levels: The system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from PTF, OPC, DHCP and VISTA files and maintained on personal computers must be afforded similar storage and access protections as the data that is maintained in the original files.

3. Authorized Veterans Benefits Administration (VBA) regional office personnel are provided direct, on-line remote access to VHA patient treatment records maintained on DHCP or VISTA systems at VA health care facilities for the purposes of reading and downloading veterans' medical record relevant to the development and adjudication of the veterans' claims. To the extent that medical treatment records do not exist in electronic format, VBA will continue to access treatment records via AMIE (Automated Medical Information Exchange) software.

4. Access to the Austin Automation Center (AAC) is generally restricted to AAC employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the AAC databases may be accessed by authorized VA employees at remote locations including VA health care facilities, VA Central Office, VISN (Veterans Integrated Service Network) Offices, and OIG headquarters and field staff. Access is controlled by individually unique passwords/codes which must be changed periodically by the employee.

5. Access to records maintained at VA Central Office, the VA Boston Development Center, the CIOFOs, and the VISN Offices is restricted to VA employees who have a need for the information in the performance of their official duties. Access to information stored in electronic format is controlled by individually unique passwords/codes. Records are maintained in manned rooms during working hours. The facilities are protected from outside access during non-working hours by the Federal Protective Service or other security personnel.

6. Information stored on computers at the CIOFOs may be accessed by authorized VA employees at remote locations including VA health care facilities and VISN Offices. Access to electronically stored information is controlled by individually unique passwords/codes. Records are maintained in manned rooms during working hours. The facilities are protected from outside access during non-working hours by the Federal Protective Service or other security personnel.

7. Access to PTF information stored by VA Central Office at the National Institutes of Health Computer Center is limited to quality assurance program staff at VA Central Office and the VISN Offices. VA Central Office staff may access the nationwide data and staff of the VISN Offices may access data for their network area. Access to file information is controlled by individually unique passwords/codes.

8. Information downloaded from OPC, PTF and VISTA/DHCP files and maintained by the OIG headquarters and field offices on automated storage media is secured in storage areas or facilities to which only OIG staff have access. Paper documents are similarly secured. Access to paper documents and information on automated storage media is limited to OIG employees who have a need for the information in the performance of their official duties. Access to information stored electronically is controlled by individually unique passwords/codes.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer (19), Veterans Health Administration, VA Central Office, Washington, DC 24020.

* * * * *

2. The system of record identified as 38VA23, ''Veterans and Beneficiaries Identification and Records Location Subsystem (BIRLS)—VA,'' published at 40 FR 38095, August 26, 1975, 41 FR 11631, March 19, 1976, 43 FR 23798, June 1, 1978, 45 FR 77220, November 21, 1980, 47 FR 367, January 5, 1982, 48 FR 45491, October 5, 1983, 50 FR 13448, April 4, 1985 and 60 FR 32210, June 20, 1995, is amended by revising the first paragraph of the storage policies and practices for the record in this system of record to read as follows:

38 VA 23

SYSTEM NAME:

Veterans and Beneficiaries Identification and Records Location Subsystem (BIRLS)—VA.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The basic file is on automated storage media (e.g., magnetic tapes and disks), with backup copies of the information on magnetic tape. Such information may be accessed through a data telecommunication terminal system designated the Benefits Delivery Network (BDN). BDN terminal locations include VA Central Office, VA regional offices, VBA Debt Management Center, VA health care facilities, Department of Defense Finance and Accounting Service Centers and the U.S. Coast Guard Pay and Personnel Center. An adjunct file (at the Records Processing Center (RPC) in St. Louis, MO) contains microfilm and paper documents of former manual Central Index claims numbers registers, partial files of pensioners with service prior to 1930, personnel with service between 1940 and 1948 with VA insurance, and partial lists of other Armed Forces personnel indexed by service number. A duplicate of the microfilm is also located at VA Central Office.

* * * * *

3. The system of records identified as 58 VA 21/22, ''Compensation, Pension, Education and Rehabilitation Records—VA,'' published at 41 FR 9294, March 3, 1976, 43 FR 3984, January 30, 1978, 43 FR 15026, April 10, 1978, 43 FR 23797, June 1, 1978, 45 FR 57641, August 28, 1980, 45 FR 77220, November 21, 1980, 47 FR 367, January 5, 1982, 47 FR 16132, April 14, 1982, 47 FR 40742, September 15, 1982, 48 FR 1384, January 12, 1983, 48 FR 15994, April 13, 1983, 48 FR 39197, August 29, 1983, 48 FR 52798, November 22, 1983, 49 FR 23974, June 8, 1984, 49 FR 36046, September 13, 1984, 50 FR 10886, March 18, 1985, 50 FR 26875, June 28, 1985, 50 FR 31453, August 2, 1985, 51 FR 24781, July 8, 1986, 51 FR 25141, July 10, 1986, 51 FR 28289, August 6, 1986, 51 FR 36894, October 16, 1986, 52 FR 4078, February 9, 1987, 54 FR 36933, September 5, 1989, 55 FR 28508, July 11, 1990, 55 FR 42540, October 19, 1990, 56 FR 15667, April 17, 1991, 56 FR 16354, April 22, 1991, 57 FR 12374, April 9, 1992, 57 FR 44007, September 23, 1992, 58 FR 38164, July 15, 1993, 58 FR 54643, October 22, 1993, and 60 FR 20156, April 24, 1995 is amended by revising the first paragraph of the storage policies and practices for the records in this system of records to read as follows:

58 VA 21/22

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records—VA.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records (or information contained in records) are maintained on paper documents in claims file folders (e.g., ''C'' file folders, educational file folders and vocational rehabilitation folders) and on automated storage media (e.g., microfilm, microfiche, magnetic tape and disks.) Such information may be accessed through a data telecommunication terminal system designated the Benefits Delivery Network (BDN). BDN terminal locations include VA Central Office, VA regional offices, VA health care facilities, VISN offices, Department of Defense Finance and Accounting Service Centers and the U.S. Coast Guard Pay and Personnel Center.

* * * * *

[FR Doc. 98–3545 Filed 2–11–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 63, No. 29

Thursday, February 12, 1998

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–5960–4]

Technical Amendments to Standards of Performance for New Stationary Sources National Emission Standards for Hazardous Air Pollutants Addition of Method 29 to Appendix A of Part 60 and Amendments to Method 101A of Appendix B of Part 61; Correction of Effective Date Under Congressional Review Act (CRA)

Correction

In rule document 98–3016 beginning on page 6493 in the issue of Monday, February 9, 1998, the CFR title is corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments; Substances, Mixtures and Exposure Circumstances Proposed for Listing in or Delisting (Removing) From the Report on Carcinogens, Ninth Edition

Correction

In notice document 98–2563 beginning on page 5565 in the issue of Tuesday, February 3, 1998 make the following correction:

On page 5566, in the second column, in the fifteenth line ''541-5096'' should read ''541-4096''.

BILLING CODE 1505-01-D

federal register

Thursday
February 12, 1998

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 1000
Tribal Self-Governance; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 1000

RIN 1076–AD20

Tribal Self-Governance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule with request for comments.

SUMMARY: This is a proposed rule to implement tribal Self-Governance, as authorized by Title IV of the Indian Self-Determination and Education Assistance Act. This proposed rule has been negotiated among representatives of Self-Governance and non-Self-Governance Tribes and the U.S. Department of the Interior. The intended effect is to transfer to participating tribes control of, funding for, and decision making concerning certain federal programs.

DATES: Comments must be received by May 13, 1998.

ADDRESSES: Comments regarding this proposed rule should be directed to: William Sinclair, Director, Office of Self-Governance, MS–2542 MIB, 1849 C Street NW, Washington, DC, 20240; telephone: 202–219–0240; electronic mail: William__Sinclair@IOS.DOI.GOV

FOR FURTHER INFORMATION CONTACT: Questions concerning this proposed rule should be directed to: William Sinclair, Director, Office of Self-Governance, MS–2542 MIB, 1849 C Street NW, Washington, DC, 20240; telephone: 202–219–0240; electronic mail: William__Sinclair@IOS.DOI.GOV

SUPPLEMENTARY INFORMATION: These draft regulations are to implement Title II of Pub. L. 103–413, the Indian Self-Determination Act Amendments of 1994. This Act established the Tribal Self-Governance program on a permanent basis and was added as Title IV (Tribal Self Governance Act of 1994) of the Indian Self-Determination and Education Assistance Act of 1975 (the ISDEA) (Pub. L. 93–638). Title I of Pub. L. 103–413 consisted of amendments to the self-determination contracting provision of the ISDEA and regulations for Title I of Pub. L. 103–413 have already been promulgated. When Pub. L. 93–638 is mentioned in these proposed regulations, it generally refers to what are now Sections 109 and Title I of the ISDEA, as amended.

The ISDEA has been amended by Congress by the following:

Pub. L. 98–250 Technical Amendments to Indian Self-Determination and Education Assistance Acts, April 3, 1984;

Pub. L. 100–202 Continuing Appropriations, Fiscal year 1988, December 22, 1987;

Pub. L. 100–446 Department of the Interior and Related Agencies Appropriations Act, 1989, September 27, 1988;

Pub. L. 100–472 Indian Self-Determination And Education Assistance Act Amendments of 1988, October 5, 1988;

Pub. L. 100–581 Review of Tribal Constitutions and Bylaws, November 1, 1988;

Pub. L. 101–301 Indian Law: Miscellaneous Amendments, May 24, 1990;

Pub. L. 101–512 Department of the Interior and Related Agencies Appropriations Act, 1991, November 5, 1990;

Pub. L. 101–644 Indian Arts and Crafts Act of 1990, November 29, 1990

Pub. L. 102–184 Tribal Self-Governance Demonstration Project Act, December 4, 1991;

Pub. L. 103–413 Indian Self-Determination Act Amendments of 1994, October 25, 1994;

Pub. L. 103–435 Indian Technical Corrections, November 2, 1994;

Pub. L. 104–109 Technical Corrections to Law Relating to Native Americans, February 12, 1996;

Pub. L. 104–208 Omnibus Appropriations Act, September 30, 1996

Since most of the legal citations are to Pub. L. 103–413, the Indian Self-Determination Act Amendments of 1994, the following table may be used to find pertinent parts of this act in 25 U.S.C.:

Section of Pub. L. 103–413	25 U.S.C. part
Sections 202, 203 and 401.	25 U.S.C. 458aa
Section 402	25 U.S.C. 458bb
Section 403	25 U.S.C. 458cc
Section 404	25 U.S.C. 458dd
Section 405	25 U.S.C. 458ee
Section 406	25 U.S.C. 458ff
Section 407	25 U.S.C. 458gg
Section 408	25 U.S.C. 458hh

The following table may be used to find the pertinent parts of 93–638, the ISDEA:

Section of Pub. L. 93–638	25 U.S.C. part
Section 3	25 U.S.C. 450a
Section 4	25 U.S.C. 450b
Section 5	25 U.S.C. 450c
Section 6	25 U.S.C. 450d
Section 9	25 U.S.C. 450e–1
Section 102	25 U.S.C. 450f
Section 103	25 U.S.C. 450h
Section 104	25 U.S.C. 450i
Section 105	25 U.S.C. 450j
Section 106	25 U.S.C. 450j–1
Section 107	25 U.S.C. 450k
Section 108	25 U.S.C. 450l
Section 109	25 U.S.C. 450m
Section 110	25 U.S.C. 450m–1
Section 111	25 U.S.C. 450n

The Indian Self-Determination Act Amendments of 1988 (Pub. L. 100–472), authorized the Tribal Self-Governance Demonstration Project for a 5-year period and directed the Secretary to select up to 20 tribes to participate. The purpose of the demonstration project was to transfer to participating tribes the control of, funding for, and decision making concerning certain federal programs, services, functions and activities or portions thereof. In 1991, there were 7 annual funding agreements under the project, and this expanded to 17 in 1992. In 1991, the demonstration project was extended for an additional 3 years and the number of tribes authorized to participate was increased to 30 (Pub. L. 102–184). The number of Self-Governance agreements increased to 19 in 1993 and 28 in 1994. The 28 agreements in 1994 represented participation in self-governance by 95 tribes authorized to participate.

After finding that the Demonstration Project had successfully furthered tribal self-determination and self-governance, Congress enacted the ''Tribal Self-Governance Act of 1994,'' Public Law 103–413 which was signed by the President on October 25, 1994. The Tribal Self-Governance Act of 1994 made the Demonstration Project a permanent program and authorized the continuing participation of those tribes already in the program.

A key feature of the 1994 Act included the authorization of up to twenty tribes per year in the program, based on their successfully completing a planning phase, being duly authorized by the tribal government body and demonstrating financial stability and management capability. The Act was amended by Public Law 104–208 on September 30, 1996, to allow up to 50 tribes annually to be selected from the applicant pool. In 1996, the Act was also amended by Public Law 104–109, ''An Act to make certain technical corrections and law related to Native Americans''. Section 403 was amended to say the following:

(1) INCORPORATE SELF-DETERMINATION PROVISIONS,—At the option of a participating tribe or tribes, any

or all provisions of title I of this Act shall be made part of an agreement entered into under title III of this Act or this title. The Secretary is obligated to include such provisions at the option of the participating tribe or tribes. If such provision is incorporated, it shall have the same force and effect as if set out in full in title III or this title.

The number of annual funding agreements grew by one to 29 in 1995 and grew to 53 and 60 agreements in 1996 and 1997, respectively, to include 180 and 202 tribes, respectively, either individually or through consortium of tribes.

The Tribal Self-Governance Act of 1994, as amended, authorizes the following things: (1) The director of the Office of Self-Governance may select up to 50 tribes annually from the applicant pool to participate in Tribal Self-Governance. (2) To be a member of the applicant pool each tribe must have: (a) Successfully completed a planning phase that includes budgetary research and internal tribal government planning and organizational preparation; (b) have requested to participate in Self-Governance by resolution; and (c) have demonstrated for the previous 3 fiscal years financial stability and financial management capability as evidenced by the tribe having no material audit exceptions in their required annual audits of Self-Determination contracts. (3) The Secretary is to negotiate and enter into annual written funding agreements with the governing body of each participating tribe that will allow that tribe to plan, conduct, consolidate and administer programs that were administered by the Bureau of Indian Affairs without regard to agency or office within which such programs were administered. Subject to such terms of the agreement, the tribes are also authorized to redesign or consolidate programs and reallocate funds. (4) The Secretary is to negotiate annual funding agreements with tribes for programs administered by the Department other than through BIA that are otherwise available to Indian tribes. Annual funding agreements may also include programs from non-BIA bureaus that have a special geographic, historic or cultural significance to the participating tribe. (5) Tribes may retrocede all or a portion of the programs. (6) For construction projects, the parties may negotiate for inclusion in AFAs specific provisions of the Office of Federal Procurement and Policy Act and Federal Acquisition Regulations. If not included, then such provisions do not apply. (7) Not later than 90 days before the effective date of the agreements, the agreements are to be sent to the Congress and to potentially affected tribes. (8) Funding agreements shall provide for advance payments to the tribes of amounts equal to what the tribe would be eligible to receive under contracts and grants under this Act. This is to include direct program and contract support costs in addition to any funds that are specifically or functionally related to the provision of benefits and services by the Secretary to the tribe or its members without regard to the organizational level within the Department where such functions are provided. (9) Except as otherwise provided by law, the Secretary shall interpret laws and regulations in a manner that will facilitate the inclusion of programs and the implementation of the agreements. (10) The Secretary has 60 days from the receipt of a tribal request for a waiver of Departmental regulations in which to approve or deny such a request; denial can only be based upon a finding that such a waiver is prohibited by federal law. (11) An annual report is to be submitted to the Congress regarding, among other things, the identification of the costs and benefits of Self-Governance and the independent views of the participating tribes. The Secretary is to publish in the **Federal Register**, after consultation with the tribes, a list of, and programmatic targets for, non-BIA programs eligible for inclusion in AFA's. (12) Nothing in the Act shall be construed to limit or reduce in any way the services, contracts or funds that any other Indian tribes or tribal organizations are eligible to receive under any applicable federal law or diminish the Secretary's trust responsibility to Indian tribes, individual Indian or Indians with trust allotments.

The Act also authorized the formation of a negotiated rulemaking committee if so requested by a majority of the Indian tribes with Self-Governance agreements. Such a request was made to the Department of the Interior and a rule making committee was formed. Pursuant to section 407 of the Act, membership was restricted to federal and tribal government representatives, with a majority of the tribal members representing tribes with agreements under the Act. Eleven tribal representatives joined the committee. Seven tribal representatives were from tribes with Self-Governance agreements and 4 were from tribes that were not in Self-Governance. Formation of the rulemaking committee was announced in the **Federal Register** on February 15, 1995.

The first meeting of the Joint Tribal/Federal Self-Governance Negotiated Rule Making Committee was held in Washington, DC on May 18, 1995. A total of 12 meetings of the full committee were held in different locations throughout the country. The last meeting was held in Washington, DC on May 15 and 16, 1997. There were numerous workgroup meetings and teleconferences during this period that were used to develop draft material and exchange information in support of the full committee meetings.

At the first meeting of the Committee, protocols were developed. The main provisions of the protocols were: (1) The Committee meetings were open, and minutes kept. The Federal Advisory Committee Act did not apply pursuant to the Unfunded Mandates Reform Act of 1995. (2) A quorum consisted of 8 members, including 7 tribal members and one federal member. The tribal and federal representatives each selected co-chairs for the Committee and an alternate. (3) The Committee operated by consensus of the federal and tribal members and formed five working groups to address specific issues and make recommendations to the Committee. (4) The intended product of the negotiations is proposed regulations developed by the Committee on behalf of the Secretary and tribal representatives. The Secretary agreed to use the preliminary report and the proposed regulations, developed by the Committee, as the basis for the Notice of Proposed Rulemaking. (5) The Committee will review all comments received from the notice of the Proposed Rulemaking and submit a final report with recommendations to the Secretary for promulgation of a final rule. Any modifications that the Secretary proposes prior to the final rule shall be provided to the Committee with notice and an opportunity to comment. (6) The Federal Mediation and Conciliation Services was used to facilitate meetings.

At the conclusion of the May 15 and 16, 1997 negotiation session, there were a number of provisions on which no agreement could be reached.

Key Areas of Disagreement

Tribal and federal negotiators did not reach consensus on the following issues, the federal and tribal suggested language for each area of disagreement are presented below, in order, by subpart and section, where appropriate. In addition to comments on the proposed rule, we are also requesting comments on each of the areas of disagreement.

General Issues

Tribal view: The fundamental disagreement between the federal representatives and the tribal representatives goes to the heart of the Tribal Self-Governance Act of 1994

(Title IV) (Pub. L. 103–413). The tribal representatives emphasized the importance of the compact as a vehicle for government-to-government relations and the funding agreements as a vehicle for the transfer of funds.

The tribal representatives also point to the groundwork that has been established under Title I of Pub. L. 93–638 and the regulations published pursuant thereto. Self-Governance is the next logical sequence in the era of self-determination policy. Hence, only steps forward, only progressive policies, only those regulations which went beyond Title I and advanced tribal empowerment over federal dominance were advocated by the tribal representatives. It is thus the tribal view that pursuant to these fundamental tenets and principles, notwithstanding any language to the contrary in the proposed regulations, a tribe assuming responsibility for any program contractible under title I is entitled to all the rights that attach to a program of the Bureau of Indian Affairs (BIA) under these regulations.

The tribal representatives viewed the inclusion of many of the non-BIA programs as mandatory and sought to negotiate the parameters of the mandate. The Act provides the tribes with flexibility; the empowerment to redesign programs and prioritize spending themselves; the opportunity to get out from under the dominance of federal agencies; and transferring the funds that support excessive federal oversight, reporting and decision-making to the local tribal level.

Federal view: The federal team agrees that government-to-government compacts and annual funding agreements are important within the context of the Act. The federal views as to the differences between compacts and annual funding agreements and the differences between programs administered by BIA and the other departmental bureaus are set forth in greater detail elsewhere in this Preamble. As a general matter, where the program involved entails a tribe administering its own affairs, the Department has sought to ensure that the tribe does have the control and authority needed to govern itself and its members. However, where the program instead involves programs administered for the Nation as a whole, where it is not a matter of a tribe governing itself and its members, then different standards apply under the law and in the regulatory proposals that the federal team has made.

The federal team also agrees that self-governance is ''the next logical sequence in the era of self-determination policy.'' However, tribal participation in a non-BIA program which is not administered for the benefit of Indians does not necessarily raise issues of either self-determination or self-governance. Such programs instead entail a cooperative spirit of working together with the local communities in the administration of programs designed for the benefit of the Nation as a whole.

BIA/Non-BIA References

Tribal view: A fundamental problem developed throughout the negotiation process, which culminated in the delineation of Department of the Interior programs into three distinct categories: (1) Bureau of Indian Affairs programs; (2) non-Bureau of Indian Affairs programs available under Title I of Pub. L. 93–638; and (3) non-Bureau of Indian of Affairs programs not available under Title I of Pub. L. 93–638. The statute mandates that all tribal rights acquired under these regulations with regard to BIA programs are equally applicable to non-BIA programs when those non-BIA programs could have been contracted under Title I of Pub. L. 93–638.

Federal view: The Department has treated programs administered by BIA differently from both non-BIA programs eligible for contracting under Pub. L. 93–638 and non-BIA programs of a special geographic, historic or cultural significance to a self-governance tribe because the law so provides. Unlike for BIA programs under subsection 403(b)(1), (25 U.S.C. 458cc(b)(1)) subsections 403(b)(2) and (3) (25 U.S.C. 458cc(b)(2) and (3)) of the Tribal Self-Governance Act of 1994 authorize the Department to negotiate for terms and conditions for non-BIA programs eligible for contracting under Pub. L. 93–638, as well as requiring approval of the Department before their reallocation, consolidation and redesign. Section 403(c), (25 U.S.C. 458cc(c)) affords the Secretary discretion to include other programs which are of special historical, cultural or geographic significance to a tribe in annual funding agreements. The federal team's proposals follow this statutory framework.

Annual Funding Agreements

Tribal view: Section 1000.83 under Subpart E (Annual Funding Agreements for BIA Programs) of the proposed regulations states that:

> At the option of the tribe/consortium, and *subject to the availability of Congressional appropriations,* a tribe/consortium may negotiate an AFA with a term that exceeds one year in accordance with section 105(c)(1) of Title I of Pub. L. 93–638. [Emphasis added.]

The terms ''agreement,'' ''funding agreement,'' and ''annual funding agreement'' are used interchangeably throughout the Tribal Self-Governance Act itself. During the Self-Governance rulemaking negotiations process, the term ''Annual Funding Agreement (AFA)'' was used in many of the initial draft documents prior to the drafting § 1000.83. Consistent with § 1000.83, the term ''Funding Agreement'' should replace ''Annual Funding Agreement'' to reflect the intent of this Subpart.

As outlined in section 1000.83, funding amounts which may be included in a Tribe's agreement are clearly subject to annual appropriation levels. However, the ''funding agreement'' is a negotiated document which may also include other terms and conditions relative to the transfer and assumption of BIA programs to a tribe/consortium. The tribal representatives contend that the proposed consistent use of this term provides clarification to this definition.

Federal view: The Tribal Self-Governance Act of 1994 is explicit in requiring the Secretary to ''to negotiate and enter into an annual written funding agreement,'' (Pub. L. 103–413, 25 U.S.C. 458 cc (a)). The federal team has used this statutory language throughout the entire regulation; however, it has made an exception in section 1000.83 which applies only to BIA. The legislative history supports the federal position:

> The Committee intends for the Secretary of the Interior to enter into government-to-government negotiations with a participating tribal government on an annual basis for the purpose of establishing annual written funding agreements for periods. S. Rpt. No. 205, 103d Cong., 1st Sess. 6 (1993) at 8.

Moreover, most appropriations for the non-BIA bureaus are annual in nature and do not permit multi-year terms in advance of future appropriations. Accordingly, whenever the term ''funding agreement'' is mentioned in the Tribal Self-Governance Act and also in this regulation, the term ''annual'' will always be applied.

Central Office Issue

Tribal view: The Tribal Self-Governance Act of 1994 is clear that ''central office'' funds are to be included in funding Agreements in sections 403 (b)(1), 405 (b)(5) and 405 (d), (25 U.S.C. 458cc(b)(l); 458ee(b)(5) and (d). Congress was especially clear in emphasizing the importance of the inclusion of Central Office funds:

> The bill language makes plain the Committee's intention that all BIA central office funds are to be negotiable and that tribal shares should be developed as a

percentage of the function transferred. If the Department of the Interior does not take positive action to fully implement this commitment to Self-Governance Tribes, the Committee will be compelled to consider mandating specific tribal share negotiation requirements for BIA central office. While the inflexibility of a statutory approach may well be less than desirable, the Department of the Interior's delay on this issue can no longer be ignored. The Committee strongly urges the Department of the Interior to immediately implement the commitment it has made to these Tribes and to the Committee. S. Rpt. No. 205, 103d Cong., 1st Sess. 6 (1993) at 10.

It is the Committee's firm intent that BIA Central Office funds and resources be included in the tribe-by-tribe negotiations for tribal shares. The Committee is partially distressed by the Department of the Interior's recent policy reversal regarding their intent to engage in serious negotiations on tribal shares of programs, services, activities, and functions controlled by BIA Central Office. This decision is in clear violation of the spirit and intent of Tribal Self-Governance. The committee strongly urges the Department to reexamine this policy reversal and pursue negotiations of tribal shares of programs, services, activities, and functions controlled by BIA Central Office. Should the Department fail to take action, the Committee will consider a legislative solution to ensure that tribes in Tribal Self-Governance receive a fair share of the programs, services, activities, and functions in the BIA Central Office accounts. H. R. Rep. No. 653, 103d Cong., 2nd Sess. 7 (1994) at 11.

The Committee also is troubled by the continuing refusal of the Department of the Interior for the past four years to negotiate, on a line-by line basis with Indian tribes participating in Tribal Self-Governance for the tribal shares of BIA Central office funds and resources despite clear directives to do so from various Congressional Committees. This bill language makes clear that all BIA Central office funds are to be negotiated and that tribal shares should be developed as a percentage of the function transferred. The language in the bill ''all funds specifically or functionally related'' means all funds appropriated or administered * * * The Committee intends any funds that are specifically or functionally related to the delivery of services or benefits to the tribe and its members, regardless of the source of the funds or the location in the Department, shall be available for self-governance compacting. H. R. Rep. No. 653, 103d Cong., 2nd Sess. 7 (1994) at 12.

Hence, the authorizing Committees intended that the permanent policy of the United States Department of the Interior should be to include central office shares in tribal funding agreements. While appropriation committees may set policies on an annual basis, they are generally limited to directives for the fiscal year only. The clear intent of Congress was to include central office shares on a permanent basis and the regulations must follow the statute and the Congressional intent.

Federal view: The sections of these proposed regulations that deal with central office tribal shares are 1000.88 and 1000.94 and are adopted by the Rulemaking Committee prior to enactment of the FY 1997 Department of the Interior and Related Agencies Appropriations Act (Pub. L. 104–20) which prohibited the inclusion of central office tribal shares in annual funding agreements. In light of this prohibition, the Department specifically requests comments on whether sections 1000.88 and 1000.94 of the proposed regulation should be amended to explicitly provide that central office funding may not be available as a result of such appropriations provisions.

Definitions

Inherently Federal Functions

Tribal view: The committee was not able to reach consensus on a definition for ''inherently federal functions.'' The definition of inherently federal functions has been an issue of great controversy during the rulemaking process. It is a critical concept because it defines a term found in Pub. L. 103–413, sec. 403 (25 U.S.C. 458cc(k)) by identifying those functions and activities of programs that may not be included in a funding agreement. The Solicitor's Memorandum of May 17, 1996, entitled ''Inherently Federal Functions under the Tribal Self-Governance Act of 1994'' is one with which the tribal representatives substantially agrees. The tribal representatives propose citing the Solicitor's Memorandum as guidance in the definitions as follows:

Inherently federal functions means those functions that must be performed by federal officials, and only federal officials, as defined in accordance with general guidelines of the May 17, 1996 Department of the Interior Solicitor's Memorandum.

As an alternative, the tribal representatives proposed the following definition, which is consistent with the Solicitor's Memorandum and substantially similar to the definition developed by the Tribal Work Group on Tribal Shares formed to review BIA work on determining tribal shares for all programs, services, functions and activities of the BIA:

Inherently federal functions means of all functions provided by a federal agency in carrying out its duties, inherently federal functions are those which by law (U.S. Constitution, treaties, federal statutes, and federal court decisions) can only be performed by federal employees, and which the agency cannot delegate to tribes or tribal organizations for performance because it is constitutionally or statutorily barred from doing so.

A well understood definition that narrowly construes this concept as clearly derived from the Constitution and statutes, while recognizing that tribes as self-governing entities stand in a different relationship to the United States than do mere grantees or contractors, is essential to successful implementation of the Tribal Self Governance Act of 1994.

Federal view: The federal team agrees that the concept of inherently federal functions is important. The federal team believes that ''inherently federal'' is one of several factors that must be considered during the negotiation of an AFA. Pub. L. 103–413, section 403 (k) (25 U.S.C. Section 458cc(k)) provides that the Tribal Self-Governance Act of 1994 does not ''* * * authorize the Secretary to enter into any agreement under Pub. L. 103–413, sections 403(b)(2) and 403(c)(1), (25 U.S.C. sections 458cc(b)(2) and 458ee(c)(1)) with respect to functions that are inherently federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. * * *'' Thus, the type of participation sought by the tribe is equally a factor that must be considered in negotiations.

The federal team further believes that the concept of ''inherently federal'' will not apply to entire programs which may be eligible for negotiation, but instead to functions or activities within those programs required under federal law to be carried out by federal officials.

As recognized in the above mentioned opinion of the Solicitor and because the scope of programs available for inclusion in an AFA is dependent upon the underlying programmatic statutes and annual appropriations, such decisions are best made on a case-by-case basis during the government-to-government negotiation process. In this manner, all relevant factors can be considered by the parties.

Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs

Suspension, Withhold or Delay Payment Under Annual Funding Agreements

Tribal view: Under Title I of Pub. L. 93–638 as amended, the Secretary is specifically given authority to withhold, suspend or delay payments (25 U.S.C. section 450j–1(*l*)). Such authority implies evaluations and oversight of tribal actions. However, a close review of Title IV the Tribal Self-Governance Act of 1994 (Pub. L. 103–413) reveals that Title IV provides no authority for the Secretary with the authority to suspend, withhold or delay payment

under an AFA. Congress determined that the funds would be better spent for services, rather than funding an additional federal compliance bureaucracy. The tribes recognize that some funds are appropriated by Congress with explicit statutory limitations regarding their expenditure and that tribes are required to meet these explicit limitations.

The tribal representatives propose this question and answer:

Does the Secretary or a designated representative have authority to suspend, withhold, or delay payment under an AFA?

No, unless the funds subject to suspension, withholding or delay are subject to a statutory limitation on their expenditure and the tribe/consortium has agreed to the terms under which such an action may be imposed. The Secretary must notify the affected tribe/consortium of the determination so that the tribe/consortium may appeal the determination. The Secretary's determination will be stayed pending the appeal.

Federal view: The federal team believes that there should be guidance regarding the conditions under which the federal government may enforce compliance with annual funding agreements by withholding, suspending or delaying payments. Pub. L. 93–638 statutory and regulatory language has a similar provision in 25 U.S.C. section 450j–1(l) and 25 CFR 900, as proposed below in the federal question and answer. Proposed section 1000.79 provides that AFAs ''are legally binding and mutually enforceable written agreements. * * *'' The federal team believes that in order for agreements to be binding and enforceable, the federal government needs some enforcement mechanism to suspend, withhold or delay payments when there is a determination that the tribe has not complied with the AFA. The federal team believes that this will have no serious effect on tribes because tribes would have an automatic emergency appeal of this governmental action. This enforcement mechanism will not require any additional federal bureaucracy. It is not anticipated that BIA will have staff for or evaluations for oversight and compliance purposes. This proposal addresses those times when a tribe has substantially failed to carry out the AFA without good cause. The federal proposal is as follows:

Does the Secretary or a designated representative have authority to suspend, withhold, or delay payment under an AFA?

No, unless otherwise provided in this part or when the Secretary makes a determination that the tribe/consortium has failed to substantially carry out the AFA without good cause. The Secretary must notify the affected tribe/consortium of the determination so that the tribe/consortium may appeal the determination. The Secretary's determination will be stayed pending the appeal.

Subpart F—Non-BIA Annual Funding Agreement

Tribal view: The tribal representatives disagree with the federal view of Pub. L. 103–413 section 403(b)(2), (25 U.S.C. 458cc(b)(2)) which is set forth below:

(b) Contents—Each funding agreement *shall*—* * *

(2) subject to such terms as may be negotiated, authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, that are otherwise available to Indian tribes or Indians, as identified in section 405(c) [25 U.S.C. 458ee(c)] of this title, except that nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided for by law; [Emphasis added.]

This provision mandates that certain non-BIA programs must be included in tribal Self-Governance compacts and funding agreements upon the request of a tribe. The word ''shall,'' which appears at the beginning of this section, is an express, clear and specific statement by the Congress that there are some non-BIA programs in the Interior Department which are mandatorily compactable under the Tribal Self-Governance Act of 1994; specifically, those programs which are deemed to be ''otherwise available'' to tribes. The tribal representatives acknowledge that the section limits these matters to terms which are subject to negotiation—in contrast, the federal representatives viewed all non-BIA Interior programs, not eligible for contracting under Pub. L. 93–638, and can only be included in the Self-Governance program upon the approval of the Department.

The tribal representatives noted that Pub. L. 103–413 section 403(c), (25 U.S.C. 458cc(c)) includes the discretionary programs for non-BIA agencies, whereas Pub. L. 103–413 section 403(b)(2), (25 U.S.C. 458cc(b)(2)) clearly is meant to provide for the mandatory non-BIA programs. Congress provided two separate sections of the Tribal Self-Governance Act of 1994 for a reason and the mandatory versus discretionary dichotomy is both logical and consistent with the plain language of that Act. Congress clearly intended that the Department err on the side of including Interior Department programs in tribal Self-Governance agreements. Congress created a presumption in favor of inclusion under the ''facilitation clause'' of Pub. L. 103–413 section 403(i), (25 U.S.C. 458cc(i)) which requires the Secretary to interpret laws and regulations in a manner that will facilitate the inclusion of programs and the implementation of agreements, but the Congress left it to the Self-Governance Negotiated Rulemaking Committee to determine which types of programs would be mandatory and which would be discretionary with the understanding that both were presumptively inclusive. Indeed, in discussing these non-BIA provisions, the House Report states:

The Committee intends this provision in conjunction with the rest of the Act, to ensure that any federal activity carried out by the Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement. H. Rpt. No. 653, 103d Cong., 2nd Sess. 7 (1994) at 10.

The tribal representatives propose the following:

Are there non-BIA programs for which the Secretary must negotiate for inclusion in an Annual Funding Agreement subject to such terms as the parties may negotiate?

Subject to such terms as may be negotiated, the Secretary shall negotiate and enter into an Annual Funding Agreement authorizing the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, that are otherwise available to Indian tribes or Indians, as identified in section 405(c), to the extent authorized and not otherwise prohibited by law.

What programs are included under section 403(b)(2) of the Act?

(a) Those programs, or portions thereof, eligible for contracting under Pub. L. 93–638; and

(b) Other programs in a non-BIA bureau of the Department that are ''otherwise available to Indian tribes and Indians'' to the extent authorized by this section of the Act, including other programs that the Secretary is not prohibited by law from awarding by contract, grant or cooperative agreement, and for competitive programs for which the tribe has received the award.

There is a clear difference between the types of programs contemplated in Pub. L. 93–638 [Title I] and those contemplated in 103–413 [Title IV]. Pub. L. 93–638 only encompasses programs for the ''benefit of Indians because of their status as Indians'' whereas Pub. L. 100–472 and Pub. L. 103–413 encompass all programs ''otherwise available to Indian tribes or Indians''. This standard was created in Pub. L. 100–472 in 1988 and its meaning for Pub. L. 103–413 is delineated in report language:

The Committee wishes to make clear to the Department of the Interior, the Committee's intention with regard to what funds are to be negotiable. At a minimum, the Secretary must provide the money that a Tribe would have been eligible to receive under Self-Determination Act contracts and grants. *In addition to this,* the Secretary must provide all funds specifically or functionally related to the Department of the Interior's provision of services and benefits to the Tribe and its members. This means the Department of the Interior must include in a Tribe's Self-Governance Funding Agreement all those funds and resources sought by the Tribe which the Federal government would have used in any way to carry out its programs and operations if it had provided services and benefits, either directly or through contracts, grants or other agreements, to the Tribe or its members in lieu of a Self-Governance agreement. This would include all funds and resources regardless of the geographic location or administrative level at which the Department of the Interior would have expended funds in lieu of a Self-Governance agreement. *The only funds the Department is legally permitted to hold back from negotiation are those which are expressly excluded by statute or those funds necessary to carry out certain limited functions which by statute may be performed only by a Federal official.* S. Rpt. No. 205, 103rd Cong., 1st Sess. 6 1996 at 9. [Emphasis added.]

Hence, the Congress meant Title IV Pub. L. 103–413 self-governance agreements to include Title I Pub. L. 93–638 programs in addition to other funds. The best *support* for this position is provided in the Tribal Self Governance Act of 1994 itself under section 403(g)(3), (25 U.S.C. 458cc(g)(3)), which applies to both BIA and non-BIA agreements:

(3) Subject to paragraph (4) of this subsection and paragraphs (1) through (3) of subsection (b), the Secretary shall provide funds to the tribe under an agreement under this title for programs, services, functions, and activities, or portions thereof, in an amount equal to the amount that the tribe would have been eligible to receive under contracts and grants under this Act, including amounts for direct program and contract support costs and, *in addition, any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the tribe or its members, without regard to the organization level within the Department where such functions are carried out.* [Emphasis added.]

The tribal representatives propose the following:

Under Pub. L. 103–413 section 403(b)(2), (25 U.S.C. 458cc(b)(2)) when must programs be awarded non-competitively?

(a) Pub. L. 93–638 Programs.

Programs eligible for contracting under Title I of Pub. L. 93–638 must be awarded non-competitively.

(b) Non-Pub. L. 93–638 Programs.

Other programs otherwise available to Indian tribes or Indians must be awarded non-competitively, except when a statute requires a competitive process.

The tribal representatives are seeking in this regulation to require the Department to treat Pub. L. 93–638 programs and non-Pub. L. 93–638 programs similarly. Without this regulation, the Department would be allowed to remove certain programs from eligibility for all tribes and arbitrarily establish its own competitive process.

Under Pub. L. 103–413 section 403(b), (2), (25 U.S.C. 458cc(b)(2)), the non-BIA bureaus have little discretion as to what funds get included in agreements, and no discretion as far as establishing competitive processes, unless allowed to do so by the Congress. The House Report states:

The language in the bill ''all funds specifically or functionally related'' means all funds appropriated or administered, not just by BIA, but also every office or agency or bureau with the Department of the Interior, including, but not limited to, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the Office of Policy Management and Budget, the National Park Service, the Bureau of Land Management, the Minerals Managements Service, the U.S. Geological Survey, the Office of Surface Mining and Enforcement, and the Bureau of Mines. The Committee intends any funds that are specifically or functionally related to the delivery of services or benefits to the tribe and its members, regardless of the source of the funds or the location in the Department, shall be available for self-governance compacting. H.R. Rep. No. 653, 103d. Cong., 2nd Sess 7 (1994) at 12.

The Senate Report, using similar language to that reprinted above, added:

Neither the source of the appropriated funds, nor the location in which it would have been otherwise spent, may limit the negotiability of these funds. S. Rep. No. 205, 103d Cong., 1st Sess 6 (1993) at 10–11.

Hence, the negotiability of funds from all divisions, bureaus and offices within the Interior Department was clearly intended by the Congress. Nowhere in the Act or in the legislative history did the Congress indicate that the Department would be allowed to make funds competitive on its own or arbitrarily take funds off the negotiating table. Each division of the Interior Department is required to make a determination, through negotiations, of the appropriate allocation of funds to a particular tribe, and once that allocation is determined, the Department is to provide that funding in a Self-Governance agreement.

The funds to be provided for non-BIA programs should not be constricted by the programmatic requirements of the non-BIA bureaus. Thus the tribal representatives propose the following:

How is funding for non-BIA programs determined?

The amount of funding is determined pursuant to section 403(g), (25 U.S.C. 458cc(g)) and applicable provisions of law, regulation, or Office of Management and Budget (OMB) Circulars.

The Tribal Self-Governance Act of 1994 makes no distinction between the method of determining funding for BIA and non-BIA programs. Section 403(g), (25 U.S.C. 458cc(g)) provides that tribes are to receive an amount equal to the amount the tribe would have received under ''Pub. L. 93–638'' contracts and grants, plus contract support, plus funds specifically and functionally related to the provision of services by the Secretary without regard to the level within the Department where such services are carried out. Section 403(g), (25 U.S.C. 458cc(g)) applies across the board to BIA and non-BIA bureaus. Hence, the tribal proposed regulation merely requires that the Department follow the law with regard to making payments to the tribes under the Tribal Self-Governance Act of 1994.

Federal view: The federal team notes that when Congress established a permanent Self-Governance program to replace the demonstration phase, it clearly distinguished between the scope of and treatment for programs administered by the Bureau of Indian Affairs under Pub. L. 103–413 403(b)(1), (25 U.S.C. 458cc(b)(1)), and programs ''otherwise available to Indian tribes or Indians'' which are administered by the other Departmental bureaus. This distinction is consistent with the objective of the Tribal Self-Governance Act of 1994 for Self-Governance tribes to have the opportunity to elect how and to what extent, they intend to administer programs that have been historically run for their benefit, ''[T]he United States recognizes a special government-to-government relationship with Indian tribes, *including the right of the tribes to self-governance,* as reflected in the Constitution, treaties, federal statutes, and the course of dealings of the United States with Indian tribes. * * *'' section 202(2) of the Tribal Self-Governance Act of 1994, (25 U.S.C. 458aa) (emphasis added).

Much of the difficulty in interpreting the law and how it applies to the non-BIA bureaus is the lack of agreement on the meaning of the term ''otherwise available to Indian tribes or Indians.''

The legislative history of the Tribal Self-Governance Act of 1994 supports the federal team's view that ''otherwise available to'' programs under section 403(b)(2) is essentially a different way of describing those programs which are eligible for contracting under Pub. L.

93–638. Significantly in this regard, the Tribal Self-Governance Act continued the scope of programs that were eligible for inclusion in AFAs under the Self-Governance Demonstration Program which stated, ''shall authorize the tribe to plan, conduct, consolidate, and administer programs, services and functions of the Department of the Interior * * * that are otherwise available to Indian tribes or Indians. * * *'' [Title III of Pub. L. 93–638, as added by Pub. L. 100–472, Title II, section 209, 25 U.S.C. 450f (note)].

The Congressional Committee reports give no indication that Congress had expanded the scope of the Program to other than programs for Indian tribes and individual Indians:

> Self-Governance promises an orderly transition from the federal domination of programs and services benefitting Indian tribes to tribal authority and control over those programs and services. (H.R. Report No. 653, 103d Congress, 2nd Session, at 7 (1994)).
>
> Since 1988, Interior has conducted Self-Governance under demonstration authority. The Self-Governance Demonstration Project has had measurable success. It has achieved the goals it set out to achieve—examining the benefits of allowing tribes to assume more control and responsibility over programs, services, functions and activities provided to their members previously furnished by the federal agency administering these programs, services, functions and activities. (S. Rpt. No. 205 at 5, 103d Cong., 1st Sess. (1993)).
>
> The funds transferred to Self-Governance tribes should include only those fun[d]s that otherwise would have been spent by the Department of the Interior, either directly or indirectly for the benefit of these tribes. Therefore, this bill should have no impact on federal outlays if it is properly administered in conformity with the intent of the Congress. (S. Rpt. No. 205 at 14, 103d Cong., 1st Sess. (1993)).

Thus, the federal team believes that programs which ''benefit'' tribes are those eligible for contracting under Pub. L. 93–638. These statements of Congressional intent are consistent with both the concept of tribes choosing how to administer programs previously administered by the Department for their benefit, and the federal team's interpretation of programs eligible for contracting under Pub. L. 103–413 section 403(b)(2), (25 U.S.C. 458cc(b)(2)).

The exception clause of Pub. L. 103–413 (25 U.S.C. 458cc(b)(2)) section 403(b)(2), i.e., ''* * * except that nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided by law * * *,'' also supports this interpretation. This clause effectively precludes the inclusion of programs in annual funding agreements for which no exemption from the competitive contracting rules apply. Programs eligible for Pub. L. 93–638 contracting are both exempt from competitive contracting and are the only programs intended specifically for Indian tribes and their members. Only Pub. L. 93–638 programs involve tribes assuming ''more control and responsibility over programs'' provided to their members and previously furnished by one or more of the non-BIA bureaus.

Congress further distinguished between BIA programs and programs administered by other bureaus in the Department in stipulating that annual funding agreements negotiated under Pub. L. 93–638 section 403(b)(2), (25 U.S.C. 458cc(b)(2)) are subject to such terms as may be negotiated. Similarly, under Pub. L. 93–638 section 403(b)(3), (25 U.S.C. 458cc(b)(3)), consolidation and redesign of only non-BIA programs authorized by section 403(b)(2), (25 U.S.C. 458cc(b)(2)) are subject to joint agreements between the parties. Congress authorized annual funding agreements for additional programs of ''special geographic, historical, or cultural significance'' to a Self-Governance tribe under Pub. L. 103–413 section 403(c), (25 U.S.C. 458cc(c)) on a discretionary basis.

The federal representatives agree with the tribal representatives that the Act was meant, primarily, to provide a means for tribes to have an opportunity to assume the dominant role in administering programs established for the benefit of Indians. The House and Senate reports to which the tribal representatives refer, however, do not support the view that non-BIA, ''non-Indian'' programs were meant to be treated the same as either BIA or non-BIA programs eligible under Pub. L. 93–638. Nor do these reports even suggest that Congress intended Title III of Pub. L. 100–472 and Title IV of Pub. L. 103–413 programs ''otherwise available'' to Indians to extend to non-BIA, non-Indian programs. Rather, such funds must be used in accordance with the specific programmatic and appropriations requirements imposed by Congress. Consistent with the federal position, Pub. L. 103–413 section 403(b)(3), (25 U.S.C. 458cc(b)(3)) permits the reallocation of funds for non-BIA programs only in accordance with a joint agreement of the tribe and the Department in order to ensure that funds are not used for purposes different from those provided in the relevant appropriations act.

The federal team also does not agree that non-BIA bureaus have little discretion as to the funding levels to be included in AFAs for programs not eligible for contracting under Pub. L. 93–638. Pub. L. 103–413 section 403(g)(3), (25 U.S.C. 458cc(g)(3)) of the Act directs the Secretary to include funds ''in an amount equal to the amount that the tribe would have been eligible to receive under contracts and grants under this Act * * *.'' The reference to the ''Act'' in this quotation is to Pub. L. 93–638. This provision also supports the federal view that programs ''otherwise available to Indians'' is simply another way of describing programs eligible for contracting under Pub. L. 93–638, *i.e.*, those programs established for the benefit of Indians because of their status as Indians, since it directs funding only for such programs. Thus, for non-Public Law 93–638 programs, the self-governance statute does not direct the inclusion of funds for such programs. The federal proposals, below, require that funding for such programs instead be at levels that the relevant bureau would have spent to administer the program at the level of activity recognized by the AFA. This balances the needs of the tribe for adequate funds to administer programs under AFA's, with the requirements of the Secretary and the bureaus to determine how to allocate their financial resources for non-Indian programs to address national, regional, and local priorities.

The federal proposal is the following:

Are there non-BIA programs for which the Secretary must negotiate for inclusion in an Annual Funding Agreement subject to such terms as the parties may negotiate?

Yes, those programs, or portions thereof, that are eligible for contracting under Pub. L. 93–638.

What programs are included under Pub. L. 103–413, section 403(b), (2) (25 U.S.C. 103–413)?

Those programs, or portions thereof, that are eligible for contracting under Pub. L. 93–638.

Under Pub. L. 103–413, section 403(b), (2), (25 U.S.C. 103–413) when must programs be awarded non-competitively?

They must be awarded non-competitively for programs eligible for contracts under Pub. L. 93–638.

The annual listing of programs, functions, and activities or portions thereof that are eligible for inclusion in AFAs required by Pub. L. 103–413 section 405(c), (25 U.S.C. 458ee(c)) are of two types. First are those programs eligible for contracting under Pub. L. 103–413, section 403(b), (2), (25 U.S.C. 458cc(b)(2)) that are available to Indians

or Indian tribes for which there is a contracting preference provided by law. Second are those programs authorized by 403(c) (25 U.S.C. 458cc(c)) that may be included in AFAs that are of special geographic, historical, or cultural significance to the Self-Governance tribe, subject to such terms as may be mutually agreed upon. These programs are listed as eligible for inclusion in AFAs at the discretion of the Secretary. The annual listing required by section 405(c) (25 U.S.C. 458ee(c)) provides a framework for discussion with Self-Governance tribes concerning what programs might be available for inclusion in AFAs under section 403(b)(2), (25 U.S.C. 458cc(b)(2)), and section 403(c) (25 U.S.C. 458cc(c)).

Subpart G—Negotiation Process for Annual Funding Agreements

Self-Governance Compact

Tribal view: The tribal position is that Compacts are important vehicles to reflect the government-to-government relationship between tribes and the United States. This relationship by definition permits variation among tribes. Additionally, individual tribes may desire to emphasize specific aspects of the relationship that have particular importance for such tribes. In interpreting what provisions permissibly may be part of a Compact, it is important to consider the guiding principles of Indian law as well as the Secretary's obligations enunciated in the Tribal Self-Governance Act of 1994 as the basis for inclusion.

25 U.S.C. section 458cc(I)(1) also provides that the Secretary is to construe laws and regulations in a manner that favors inclusion of programs in Self-Governance. In this context, it is not necessary to find specific statutory authorization to justify adding appropriate terms and conditions to Compacts. Compacts were created without statutory authorization by the tribes and the Department in the exercise of reasonable discretion to further the implementation of Self-Governance. To the extent that the tribe's desired terms and conditions for Compacts do not conflict with these regulations, when promulgated, that same discretion that created Compacts should allow such terms and conditions.

One area in which there should be no question is the inclusion of any provision authorized by Pub. L. 104–109 which provides that any and all provisions of Title I of Pub. L. 93–638 may be included in Self-Governance agreements. It reads:

At the option of a participating tribe or tribes, any or all provisions of part A of this subchapter shall be made part of an agreement entered into under title III of this Act or this part. The Secretary is obligated to include such provisions at the option of the participating tribe or tribes. If such provision is incorporated it shall have the same force and effect as if set out in full in Title III or this part. Pub. L. 104–109

The term ''agreement'' as used in Title III of Pub. L. 104–109 and Title IV of Pub. L. 104–413 means both compacts and funding agreements. Congress was aware that both documents existed and, had it wished to limit the application to funding agreements or only agreements for BIA programs, it would have done so. In the same provision, Congress made clear through the use of the terms ''shall,'' ''obligated,'' and ''option of the participating tribe'' that the Secretary has no discretion to refuse to incorporate such provisions. Therefore, the provisions of Title I can be incorporated into a compact applicable to BIA programs and non-BIA programs.

The tribal proposal is the following:

Can a tribe negotiate other terms and conditions not contained in the model compact?

Yes. The Secretary and a self-governance tribe/consortium may negotiate additional terms relating to the government-to-government relationship between the tribe(s) and the United States. A tribe/consortium may include any term that may be included in a contract and funding agreement under Title I in the model compact contained in appendix A.

Federal view: The federal team acknowledges the significant role played by the negotiated compacts during the Tribal Demonstration Program. With no regulations in place, those compacts established the rules pertaining to the particular BIA programs that were covered in AFAs. The proposed regulations in subpart G recognize that the role of compacts for the permanent program is somewhat different. Section 1000.151, for instance, provides that a ''self-governance compact is an executed document which affirms the government-to-government relationship between a self-governance tribe and the United States.'' It is important to remember that the Act does not explicitly authorize or require the Secretary to enter into compacts, nor does it require that a tribe have a compact in order to participate in the Self-Governance Program. The Secretary lacks the authority from Congress under this Act to enter into binding agreements of a perpetual term applicable to all programs administered by the Department.

The federal team distinguishes between compacts which set forth the terms of the government-to-government relationship generally and AFAs which detail the funding, terms and conditions pertaining to the specific programs established by Congress and which are eligible to be administered under the Tribal Self-Governance Act of 1994 by a tribe/consortium. With the promulgation of regulations under the Act, the federal team views compacts as serving primarily the policy function of emphasizing the government-to-government relationship between the United States and tribes. The federal team believes that the reference in Pub. L. 104–109 to ''agreements'' is intended to refer to annual funding agreements. The particular programs of the non-BIA bureaus are performed under a number of different programmatic statutes and appropriations provisions which vary substantially from the administration of BIA programs. It is difficult, if not impossible, to develop and apply rules applicable to all such programs. Rather, the federal team believes that Congress intended that this is best left to the individual AFAs. At the same time, by explicitly recognizing the discretion of the Secretary in proposed section 1000.153 to include additional terms in compacts not included in the Model Compact, the regulations provide the Secretary with the flexibility to include particular terms that address specific situations that may arise in the future. Because of this the federal team does not believe any additional language is required in proposed section 1000.153

The federal position is reflected in the proposed regulation at section 1000.153.

Successor Annual Funding Agreements

Tribal view: Successor funding agreements are important to protect against gaps in funding and to provide legal protections that may occur from unintended breaks between agreements. For example, if the Department and the tribe/consortium reach a point where a gap occurs and no agreement is in place, the Federal Tort Claims Act may not protect the tribe. Such gaps, whether caused by the inability to negotiate new terms or a delay in processing funding agreements, are also dangerous in numerous other areas ranging from the protection of trust assets to law enforcement.

The Secretary has ample discretion, as demonstrated throughout these regulations, to adopt successor funding agreements. There is nothing in Title IV, Tribal Self-Governance Act of 1994, that would prohibit the Secretary from utilizing successor funding agreements. These agreements are, of course, subject

to appropriations and would not create any new funding obligations for the Department. Successor agreements, which are equally applicable to BIA and non-BIA programs, are clearly within the discretion of the Secretary and serve important governmental purposes. As noted in previous sections, the Secretary has an obligation to utilize discretion to make Self-Governance effective and inclusive.

The tribal proposal is the following:

How are successor annual funding agreements completed?

At the conclusion of the negotiations of the successor AFA, the tribe/consortium is responsible for submission of the proposed AFA to the Secretary. If the successor AFA is submitted to the Secretary no less than 105 days prior to its effective date, prior to 90 days before the effective date of the AFA,

(a) the Annual Funding Agreement shall be executed by the Secretary or proposed amendments delivered in writing to the tribe/consortium; or

(b) the previous year's AFA shall, subject to appropriations, be deemed to have been extended until a successor AFA is acted upon and becomes effective when executed by the Secretary on the 90th day prior to the proposed effective date.

Federal view: The federal team believes the following: (1) There is no authorization in the Tribal Self-Governance Act of 1994 for an AFA to be automatically extended; (2) the Department lacks the legal authority to ''deem'' agreements to be extended; (3) such action in advance of an appropriation would be considered a violation of the Anti-Deficiency Act, 31 U.S.C. 1341; and (4) there is no legally permissible means of dealing with the problem of the potential gap caused by the 90 day Congressional review period. Accordingly, the federal team has not proposed a question and answer for this issue.

Subpart H—Limitation and/or Reduction of Services, Contracts, and Funds

Tribal view: Proposed regulations 1000.81 through 1000.88 implement section 406(a) of the Tribal Self-Governance Act of 1994 (25 U.S.C. 458ff(a)), which provides:

Nothing in this title shall be construed to limit or reduce in any way the services, contracts, or funds that any other Indian tribe or tribal organization is eligible to receive under section 102 or any other applicable Federal law.

These provisions were designed to assure that funds transferred to Self-Governance tribes/consortia do not have negative consequences for non-self-governance tribes/consortia with respect to programs which they were entitled to receive. The concept that another party may be injured requires an examination of which programs tribes have a right to expect under existing law. The proposed regulations as drafted apply only to BIA programs and not to non-BIA programs. The regulations should apply to non-BIA programs as well.

The crux of the issue, as reflected in a number of disputed regulations, is whether any non-BIA programs are mandatory—programs for which tribes/consortia have a right to the program in a funding agreement. At least some non-BIA programs are ''mandatory'' programs, through pre-existing language that predicates the Secretary's requirement to include programs of special significance to Indians in Self-Governance. The discretionary authority provided to the Secretary to negotiate special terms and conditions in agreements for such programs does not in the tribal view remove the ''mandatory'' inclusion requirement as reflected by the Congressional use of the term ''shall'' rather than the term ''may.'' Pub. L. 103–413, section 403(b), 25 U.S.C. section 458cc(b).

The tribal representatives find the federal argument in this subpart inconsistent with the federal position in subpart F for non-BIA programs. The Federal team, without ever conceding in these regulations that any of these programs may be available as a matter of right, view that the individuals and tribes might suffer unfairly from the limits on remedies under the provisions applicable to the BIA. The tribal representatives believe that the federal argument is for rejecting application of plain language of the statute to their programs. Regardless of the bureau responsible for a program, an individual or tribe with concerns that arise under this subpart should have the opportunity to formally raise them and have them considered.

Federal view: The federal team acknowledges that the proposed regulations concerning limitation and/or reduction of services, contracts and awards apply only to agreements covering programs administered by BIA. The proposed regulations implement section 406(a) of Pub. L. 104–413 (25 U.S.C. 458ff(a)) which provides:

Nothing in this title shall be construed to limit or reduce in any way the services, contracts, or funds that any other Indian tribe or tribal organization is eligible to receive under section 102 or any other applicable federal law.

This provision applies on its face whenever another tribe or tribal organization is ''eligible'' to receive funding, and not only when such funding is mandatory.

The Department disagrees with the tribal proposal for several reasons. First, it is not clear to what extent this provision will impact programs of the non-BIA bureaus and the Department is uncertain in what situations or how this issue is likely to arise. Until some experience in this regard is gained, and because the non-BIA bureaus will handle such issues on a case-by-case basis in the absence of regulations, the Department has not supported issuing regulations which are applicable to the non-BIA bureaus. The Department encourages comments to be submitted on how this provision should be viewed in relation to non-BIA programs which in many cases are funded quite differently from those of BIA. In particular, can or should this provision be construed to apply only to programs eligible for contracting under Pub. L. 93–638? In some cases, multiple tribes or tribal organizations could be eligible to carry out a ''nexus'' program administered by a non-BIA bureau. In such cases, a literal reading of section 406(a), (25 U.S.C. 458ff(a)) would imply that no AFA could be entered for such programs since it reduces the amount of funding that the other eligible tribes or tribal organizations could receive. Could or should the other eligible tribes be able to ''waive'' any rights they might have under this statutory provision?

Second, the federal team has concerns about whether the provisions proposed for BIA programs are appropriate for the non-BIA bureaus. Proposed regulation 1000.183 does not allow this issue to be raised administratively by individual Indians who might be affected or aggrieved by an AFA within the context of section 406(a) of Pub. L. 104–413 (25 U.S.C. 458ff(a)). Proposed regulation 1000.185 only permits the issue to be raised at certain times, although an affected tribe or tribal organization may not have actual knowledge that it has been impacted by that AFA, or the limitation does not actually affect that other tribe or organization until some later year. While the proposed regulations would deny administrative appeals, it would appear that aggrieved parties could still seek judicial review under section 110 of Pub. L. 93–638 (25 U.S.C. 450m–1). In such cases, there would not be an administrative record for review by the court. The federal team does not support limiting the rights of aggrieved parties at the administrative level for the programs that they administer. Moreover, proposed regulation 1000.188 provides that ''shortfall funding, supplemental funding, or other available'' resources would be used to remedy these

situations in the current fiscal year. The non-BIA bureaus do not have ''shortfall'' funding; it is quite possible that they will lack the resources to commit additional resources to such programs as this provision proposes, and they cannot support a regulatory provision with which they could be unable to comply.

Subpart K—Construction

Tribal view: Tribal representatives have proposed a regulation which explains that all provisions of the regulations apply to funding agreements that include construction projects to the extent that they are not inconsistent with provisions in the regulations that are specific to construction activities. The tribal proposal is as follows:

Do all provisions or other subparts apply to construction portions of AFAs?

Yes, unless they are inconsistent with this subpart.

Federal representatives argue that this provision should specifically identify provisions in the regulations which under no circumstances apply to construction funding agreements. Tribal representatives reject the federal proposal because it is overbroad—it requires that specific regulations not apply to construction funding agreements, when in fact they may apply to such agreements in certain circumstances.

For example, federal representatives assert that sections 1000.32, 1000.33 and 1000.34 cannot apply to construction funding agreements because they allow tribes to withdraw from a tribal organization's funding agreement a portion of funds which is attributable to that tribe. Under the federal proposal, these provisions cannot apply to construction funding agreements because there are no circumstances under which a tribe can withdraw from a tribal organization and take out its share of the funds. While this may be correct for construction projects that are funded on a lump sum, project specific basis (i.e. building a dam that affects a number of tribes), this is not true if the construction project is funded through an accumulation of tribal shares from tribes that make up the tribal organization that is responsible for the construction activities (i.e. constructing roads for a number of tribes). In the latter scenario there is no reason why a withdrawing tribe would not have a right to its tribal share if it wishes to do the construction itself. The tribal proposal makes it clear that a withdrawing tribe is only entitled to a portion of the funds that were included in the funding agreement on the same basis or methodology upon which the funds were included in the consortium's funding agreement.

Another example is the applicability of § 1000.82 of these regulations to construction funding agreements. Federal representatives argue that a tribe may not select any provision of Title I (Pub. L. 93–638) for inclusion in a construction funding agreement because doing so would be inconsistent with all of the construction regulations. This argument completely ignores that there are provisions in Title I (Pub. L. 93–638) which a tribe may choose to include in its construction funding agreement that are not inconsistent with the construction regulations. For example, Pub. L. 93–638, section 106 (25 U.S.C. 450j–1(h)) explains how indirect costs for construction programs are to be calculated. This provision is not inconsistent with the subpart in these regulations that address construction issues, and therefore there is no reason why a tribe would not have the right as provided for in section 1000.82 to incorporate it in a construction funding agreement.

These examples illustrate how the federal proposal is overbroad because it would not make applicable to construction funding agreements a number of provisions in the regulations which may apply in specific circumstances. The tribal proposal addresses the federal concern by making clear that no regulations apply to construction funding agreements if they are inconsistent with the construction-specific regulations.

Federal view: The federal and tribal representatives agree that where other provisions of these regulations are inconsistent with the construction subpart, the construction subpart shall govern. It is the Federal team's view, however, that in addition to this general exception, specific sections are inconsistent and that these sections should be specifically identified. The federal team proposes the following question and answer:

Do all provisions of other subparts apply to construction portions of AFAs?

Yes, except for sections 1000.32, 1000.33, 1000.34, 1000.82, 1000.83, 1000.88, 1000.92, 1000.94, 1000.95, 1000.96, 1000.97, 1000.98, and 1000.100 or unless they are inconsistent with this subpart.

The justification for excluding these sections of the proposed regulations from the construction subpart follows:

Sections 1000.32, 1000.33, and 1000.34. These sections allow tribes(s) in a consortium to withdraw from the consortium's AFA and take out the portion of funds attributable to the withdrawing tribe. Whether the construction project was in the design or construction phase, the project would immediately become underfunded without any basis to resolve the shortfall of funds. Unlike most other programs, construction is a nonrecurring service; any suspension or delay in construction automatically results in an increase in costs and a delay in the delivery date agreed to in the AFA. For example, any delays in a segment of a critical path project, such as an aqueduct, delays the entire construction project. This conflicts with the construction subpart, particularly sections 1000.227 and 1000.228(d), which requires performance in accordance with the AFA delivery schedule and only allows changes in the work which increase the negotiated funding amount, the performance period or the scope or objective of the project, with prior Secretarial approval.

Section 1000.82. This section is inconsistent with the entire construction subpart, since a tribe could select ''any'' provision of Title I of Pub. L. 93–638 in an AFA. Section 403(e)(1), (25 U.S.C. 458cc(e)(1)) allows the negotiation of Federal Acquisition Regulations provisions and 403(e)(2) of Pub. L. 103–413, (25 U.S.C. 458cc(e)(2)) requires the Secretary to ensure health and safety for construction. The basic premise of many exceptions for construction in Pub. L. 93–638(25 U.S.C. 450j) was to enable the Secretary to ensure health and safety. For example, the model contract in section 108 of Pub. L. 93–638 (25 U.S.C. 450*l*) was expressly excluded from construction by section 105(m) of Pub. L. 93–638 (25 U.S.C. 450j(m)). The model contract permits only one performance monitoring visit by the Secretary for the contract. The engineering staffs of the Department of Health and Human Services and the Department of the Interior concluded that the Secretary could not ensure health and safety with the right to conduct only one performance inspection during the contract. Also, the model contract allows design changes during performance without Secretarial approval and does not allow termination of a construction contract by the Secretary for substantial failures of performance. Further, the model contract excludes federal program guidelines, manuals or policy directives, which is inconsistent with the construction subpart. These are only a couple of Pub. L. 93–638 provisions that are inconsistent with the construction subpart.

Section 1000.83. This provision would extend the term of a construction

contract at the option of a tribe, which would generally increase the cost of the project.

Sections 1000.88 and 1000.92. These sections will eliminate a pro rata portion of Facilities Management Construction Center and the BIA Road Construction Division for the central office, area offices, and field offices for these functions for the portion of the appropriation allocable to Self-Governance AFAs. However, the BIA is still responsible under agreement with the Department of Transportation and under Pub. L. 103–413 section 403(e)(2), (25 U.S.C. 458cc(e)(2) to ensure safe construction.

Sections 1000.94 through 1000.98. These sections raise the same issues discussed for sections 1000.88 and 1000.92 above.

Section 1000.100. This section allows the tribe to reallocate funds at its option in BIA AFAs, unless otherwise required by law. Many construction projects are decided on a priority basis out of many needy projects. Others are simply listed in the relevant bureau's budget. However, these projects are not ''required'' by law, since they are not usually earmarked in writing in the Appropriation Act. It is clear, however, that the bureau is ''required'' by the appropriate Congressional committee to obligate and expend the funds as approved in the budget submitted to Congress. Accordingly, the answer to this question should at a minimum state: ''Unless otherwise required by budget submitted to Congress or law, and except for construction projects, the Secretary does not have to approve the reallocation of funds between programs.''

Subpart Q—Miscellaneous Provisions Cash Management

Tribal view: Federal representatives propose below regulations that restrict the manner in which tribes or tribal organizations can invest funds that are received through Self-Governance agreements. There is no statutory authority for such regulations in Pub. L. 103–413; Pub. L. 93–638 similarly contains no such statutory authority and, appropriately, no regulations under Title I impose such limitations on the ability of tribes to invest funds. The federal proposal undermines the Tribal Self-Governance Act of 1994 by precluding tribes from managing and investing funds as responsible stewards in a manner which allows maximum return on their investments while insuring the integrity of the funds.

Recognizing that the federal representatives expressed an interest shared by tribes which is to insure that funds are held in a manner that insures financial integrity tribal representatives propose language on investments which imposes the same financial management standards that the special trustee has proposed for managing Indian monies entrusted in the care of the federal government, the ''prudent investor'' standard. The tribal proposal is:

1. Are there any restrictions on how funds transferred to a tribe/consortium under a funding agreement may be spent?

Yes, funds may be spent only for costs associated with purposes authorized under the funding agreement.

2. May a tribe/consortium invest funds received under self-governance agreements?

Yes. Any such funds must be invested in accordance with the ''prudent investor standard,'' and must be managed with care and prudence in a manner which would ensure against any significant loss of principal.

3. Are there restrictions on how interest or investment income which accrues on funds provided under self-governance agreements may be used?

Unless restricted by the annual funding agreement, interest or income earned on investments or deposits of self-governance awards may be placed in the tribe's general fund and used for any governmental purpose approved by the tribe. The tribe may also use the interest earned to provide expanded services under the self-governance funding agreement and to support some or all of the costs of investment services.

Federal view: It is the concern of federal team that federal funds be safeguarded pending expenditure for purposes approved under an AFA. The federal representatives assert that placing federal cash in non-secured investments poses a significant risk of loss of federal funds. Where the Congress by statute has allowed other Indian grantees to invest federal funds (e.g. the Tribally Controlled Community College Assistance Amendments of 1986 and the Tribally Controlled Community Schools Act of 1988) such investments have been limited to obligations of the United States or in obligations that are fully insured by the United States. The same limitations on investments are proposed for federal funds advanced to Indian tribes under self-governance AFAs.

The federal team believes that the following proposals impose minimal requirements on Self-Governance tribes/consortia, yet are critical to the maintenance of federal financial integrity. As such, these proposals are authorized as part of maintaining the federal trust responsibility under section 406(b) of the Public Law 103–413 (25 U.S.C. 458ff(b)).

1. Are there any restrictions on how funds transferred to a tribe/consortium under an AFA may be spent?

Yes, funds may be spent only for costs associated with programs, services, functions and activities contained in the self-governance AFAs.

2. May a tribe/consortium invest funds received under self-governance agreements?

Yes, self-governance funds may be invested if such investment is in (1) obligations of the United States; (2) obligations or securities that are within the limits guaranteed or insured by the United States, or; (3) deposits insured by an agency or instrumentality of the United States.

3. Are there restrictions on how interest or investment income which accrues on any funds provided under self-governance AFAs may be used?

Unless restricted by the AFA, interest or income earned on investments or deposits of self-governance awards may be placed in the tribe's general fund and used for any purpose approved by the tribe. The tribe may also use the interest earned to provide expanded services under the self-governance AFA and to support some or all of the costs of investment services.

Waiver Request

Tribal view: The tribal representatives note that Pub. L. 103–413, sec. 403 (I)(2) (25 U.S.C. section 458cc(I)(2)) authorizes the Secretary, upon request of a tribe/consortium, to waive the application of a federal regulation included in a self-governance funding agreement. The provision provides as follows:

Not later than 60 days after receipt by the Secretary of a written request by a tribe to waive application of a Federal regulation for an agreement entered into under this section, the Secretary shall either approve or deny the waiver in writing to the tribe. A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law. The Secretary's decision shall be final for the Department.

This language authorizes waiver of all federal regulations that may apply to funding agreements and the provision includes a strong presumption in favor of waiving regulations. Further, tribal representatives note that section 107(e) of Title I (25 U.S.C. 450k(e)) has been interpreted by the Department of the Interior to permit a waiver to be automatically granted in the event the Department does not provide a response to the request within a certain time-frame. Regulations implementing these provisions provide for the automatic granting of a waiver if the Department fails to act within a period of 90 days. See 25 CFR 900.144. There is no reason why this right should not be extended

to tribes under Title IV, the Tribal Self-Governance Act of 1994. Accordingly, tribal representatives proposed a waiver regulation, set forth below, which is consistent with the waiver of regulations adopted under Pub. L. 93–638, Title I:

How much time does the Secretary have to process a waiver request?

The Secretary must approve or deny a waiver request within 60 days of receipt of the request. The decision must be in writing. Unless a waiver request is denied within sixty (60) days after the date it was received it shall be deemed approved.

Federal view: The federal team acknowledges that the Tribal Self-Governance Act of 1994 (Pub. L. 103–413; Title IV requires a written decision be made within a 60-day period. Consistent with that Act, the regulations also should state this point. Unlike under Pub. L. 93–638 (25 U.S.C. 450), there is no authorization in Tribal Self-Governance Act of 1994 for automatic approval of waiver requests when a deadline is missed. Furthermore, the nature and scope of the Pub. L. 93–638 waiver provision is substantially different from that of the self-governance waiver provision. The Pub. L. 93–638 regulations at 25 CFR 900.144 authorize waiver of only the Self-Determination regulations which are procedural regulations. The waiver provision of Title IV of Pub. L. 103–413 addresses the waiver of substantive Department-wide regulations. Because this waiver provision is broader in scope, and because the Department lacks statutory authority to deem approval, the federal team wants to ensure that when a waiver is granted, there has been active federal participation in the approval process.

How much time does the Secretary have to process a waiver request?

The Secretary must approve or deny a waiver request for an existing AFA within 60 days of receipt of the request. The decision must be in writing.

Conflicts of Interest

Tribal view: The tribal representatives object to the federal proposal on conflicts of interest for a number of fundamental reasons. First, there is no statutory basis in Title IV (Pub. L. 103–413) for requiring such rules for tribes. Indeed, the point of this Act is to allow tribes greater autonomy to run their internal affairs in their own way. Second, at the heart of the Act is the compact and the AFAs which are to reflect the government-to-government relations between the tribe and the United States. Any specific requirements for matters such as conflict of interest should be the subject of the specific agreements entered into by individual tribes. Third, establishing a single set of rules fails to take into account the diversity of tribes and tribal situations. Providing flexibility, as the tribal representatives believe their proposed language does, does not diminish the likelihood of adequate safeguards; it improves the likelihood by allowing tribes to set standards consistent with the tribe's size, history, culture, and tradition.

The tribal representatives propose language limiting the application of the regulations to situations where in the financial interests of tribes and beneficial owners conflict and are significant enough to impair a tribe's objectivity.

Organizational Conflicts

What is an organizational conflict of interest?

An organization conflict of interest arises when there is a direct conflict between the financial interests of the Indian tribe/consortium and the financial interests of the beneficial owners relating to Indian trust resources. This section only applies where the financial interests of the Indian tribe/consortium are significant enough to impair the Indian tribe/consortium's objectivity in carrying out an AFA, or a portion of an AFA. Further, this section only applies if the conflict was not addressed when the AFA was first negotiated.

What must an Indian tribe/consortium do if an organizational conflict of interest arises under an AFA?

This section only applies if the conflict was not addressed when the AFA was first negotiated. When an Indian tribe/consortium becomes aware of a conflict of interest, the Indian tribe/consortium must immediately disclose the conflict to the Secretary.

Personal Conflicts

What is a personal conflict of interest?

A personal conflict of interest may arise when a person with authority within the tribe/consortium has a financial interest that may conflict with an interest of the tribe/consortium or an individual beneficial owner of a trust resource.

When must an Indian tribe/consortium regulate its employees or subcontractors to avoid a personal conflict of interest?

An Indian tribe/consortium must maintain written standards of conduct, consistent with tribal law and custom, to govern officers, employees, and agents (including subcontractors) engaged in functions related to the management of trust assets and provide for a tribally approved mechanism to resolve such conflicts of interest.

The federal proposal is overbroad and unnecessarily burdensome. The proposed regulation imposes requirements on tribes with regard to the ''statutory obligations of the United States to third parties.'' Exactly how the tribes are to be given notice of these obligations is unclear, yet the regulations proposed impose a duty on the tribes to avoid conflicts with these third parties. The federal proposal includes three regulations on ''personal conflicts'' which impose federal-type standards onto tribes. Such requirements inhibit tribes from legislating and regulating on their own and are a significant breach of tribal sovereignty.

Federal view: The federal team believes that conflicts of interest regulations are required to balance the federal-tribal government relationship with the Secretary's trust responsibility under section 406(b) of Pub. L. 103–413 (25 U.S.C. 458ff(b)) to Indian tribes, individual Indians and Indians with Trust allotments. The federal proposal is essentially identical to the Pub. L. 93–638 (25 U.S.C. 450) regulation adopted by the Secretaries of the Interior and Health and Human Services. The federal proposal addresses two types of conflicts: conflicts of the tribe or tribal organization itself (an ''organizational conflict''), and; conflicts of individual employees involved in trust resource management.

Under the federal proposal, the conflicts of interest regulations only apply if the AFA fails to provide equivalent protection against conflicts of interest to these regulations.

The proposed federal regulations for an organizational conflict of interest address only those conflicts discovered after the AFA is signed.

Such conflicts occur when there is a direct conflict between the financial interests of the Indian tribe/consortium and the financial interests of the beneficial owners relating to trust resources; the tribe and the United States relating trust resources; or an express statutory obligation of the United States to third parties. If the Indian tribe/consortium's AFA does not address conflicts of interest, then the Indian tribe/consortium must immediately disclose the conflict to the Secretary.

The proposed federal regulations for personal conflicts of interest would require an Indian tribe/consortium to have a tribally-approved mechanism to ensure that no officer, employee, or agent of the Indian tribe/consortium has a financial or employment interest that conflicts with that of the trust beneficiary. The proposal also prohibits such individuals from receiving gratuities.

The federal proposal is as follows:

What is an organizational conflict of interest?

An organizational conflict of interest arises when there is a direct conflict between the financial interests of the Indian tribe/consortium and:

(a) The financial interests of beneficial owners of trust resources;

(b) The financial interests of the United States relating to trust resources, trust acquisitions, or lands conveyed or to be conveyed pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq*); or

(c) An express statutory obligation of the United States to third parties. This section only applies where the financial interests of the Indian tribe/consortium are significant enough to impair the Indian tribe/consortium's objectivity in carrying out an AFA.

What must an Indian tribe/consortium do if an organization conflict of interest arises under an AFA?

This section only applies if the conflict was not addressed when the AFA was first negotiated. When an Indian tribe/consortium becomes aware of a conflict of interest, the Indian tribe/consortium must immediately disclose the conflict to the Secretary.

When must an Indian tribe/consortium regulate its employees or subcontractors to avoid a personal conflict of interest?

An Indian tribe/consortium must maintain written standards of conduct to govern officers, employees, and agents (including subcontractors) engaged in functions related to the management of trust assets.

What types of personal conflicts of interest involving tribal officers, employees or subcontractors would have to be regulated by an Indian tribe/consortium?

The Indian tribe/consortium must have a tribally approved mechanism to ensure that no officer, employee, or agent (including a subcontractor) of the Indian tribe/consortium reviews a trust transaction in which that person has a financial or employment interest that conflicts with that of the trust beneficiary, whether the Indian tribe/consortium or an allottee. Interests arising from membership in, or employment by, an Indian tribe/consortium, or rights to share in a tribal claim need not be regulated.

What personal conflicts of interest must the standards of conduct regulate?

The standards must prohibit an officer, employee, or agent (including a subcontractor) from participating in the review, analysis, or inspection of a trust transaction involving an entity in which such persons have a direct financial interest or an employment relationship. It must also prohibit such officers, employees, or agents from accepting any gratuity, favor, or anything of more than nominal value, from a party (other than the Indian tribe/consortium) with an interest in the trust transactions under review. Such standards must also provide for sanctions or remedies for violating the standards.

May an Indian tribe/consortium elect to negotiate AFA provision on conflict of interest to take the place of this regulation?

Yes. An Indian tribe/consortium and the Secretary may agree to AFA provisions concerning either personal or organizational conflicts that address the issues specific to the program included in the AFA. Such provisions must provide equivalent protection against conflicts of interests to these regulations. Agreed-upon provisions shall be followed, rather than the related provisions of this regulation. For example, the Indian tribe/consortium and the Secretary may agree that using the Indian tribe/consortium's own written code of ethics satisfied the objectives of the personal conflicts provision of this regulation, in whole or in part.

Supply Sources

Tribal view: The tribal proposal differs from that of the federal team in that the tribal representatives believe that it should be the duty of the Department of the Interior to facilitate the relationship with the General Services Administration. The tribal proposal would so require in the regulation given the continuing difficulties tribes have in accessing their full rights to receive services through the General Services Administration. The tribal proposal reads:

Can a tribe/consortium use federal supply sources in the performance of an AFA?

A tribe/consortium and its employees may use Federal supply sources (including lodging, airline, interagency motor pool vehicles, and other means of transportation) which must be available to the tribe/consortium and to its employees to the same extent as if the tribe/consortium were a federal agency. Implementation of this section is the responsibility of the General Services Administration (GSA). The Department of the Interior shall facilitate the tribe/consortium's use of supply sources and assist it to resolve any barriers to full implementation that may arise in the GSA.

Federal view: The federal team maintains that only General Services Administration (GSA) has the legal authority concerning a tribe's/consortium's use of federal supply sources. Pub. L. 93–638 requires that the tribes/consortia be treated as any other federal agency in use of federal supply sources. The GSA is responsible for implementation and approval for all federal agencies with respect to sources of federal supplies. The federal proposal alerts the tribes/consortia to the fact that they will receive the same treatment from GSA as all other federal agencies. The Department of the Interior intends to work with GSA to implement this provision. The federal proposal is as follows:

Can a tribe/consortium use federal supply sources in the performance of an AFA?

A tribe/consortium and its employees may use federal supply sources (including lodging, airline, interagency motor pool vehicles, and other means of transportation) which must be available to the tribe/consortium and to its employees to the same extent as if the tribe/consortium were a federal agency. Implementation of this section is the responsibility of the General Services Administration (GSA).

Leasing

Tribal view: There is no authority in the statute to limit the rights of Self-Governance tribes compared to the rights of contracting tribes or to impose limitations regarding the acquisition of property not otherwise imposed by any existing statute or regulation Pub. L. 93–638, section 105 (25 U.S.C. 450j(*l*)) states:

(*l*) Lease of facility used for administration and delivery of services

(1) Upon the request of an Indian tribe or tribal organization, the Secretary shall enter into a lease with the Indian tribe or tribal organization that holds title to, a leasehold interest in, or a trust interest in, a facility used by the Indian tribe or tribal organization for the administration and delivery of services under this Act.

(2) The Secretary shall compensate each Indian tribe or tribal organization that enters into a lease under paragraph (1) for the use of the facility leased for the purposes specified in such paragraph. Such compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable.

Indeed, the regulation (25 CFR § 900.69–900.72) adopted under Title I, provides a laundry list of costs that may be included in the lease compensation, but, consistent with the statute, nowhere does the Title I regulation proscribe leases on buildings acquired from the federal government or purchased with federal resources. The source of the building is not relevant to the terms of the lease, nor does the fact that the building may have been acquired through federal assistance mean that the tribe is not experiencing costs associated with the building that need to be compensated. The tribal representatives propose either deleting this section entirely or making the Title I, (Pub. L. 93–638) regulations, 25 CFR 900.69–900.72, applicable.

Federal view: The federal team proposal is drafted so that it complies with Pub. L. 93–638, section 106 (25 U.S.C. section 450j(*l*)). The federal proposal delineates limited circumstances that would not allow

leasing arrangements if title to the facility was obtained by the tribe through excess federal government property or if the construction of the facility was federally financed. There is no rationale for the federal government to pay twice—once for the construction of the facility and again for the leasing back of that facility from the tribe. The federal proposal is as follows:

Can a tribe/consortium lease its tribal facilities to the federal government for use in the performance of an AFA?

(a) For BIA programs, the Secretary must enter into a lease with the tribe/consortium to use tribal facilities for AFA programs. The Secretary may enter into a lease only if appropriations are available for implementation of section 105(*l*)(1) and (2) of Pub. L. 93-638, as amended (25 U.S.C. 450j(l)),

(b) This section does not apply to former federal facilities acquired by a tribe/consortium as excess or surplus property, or to construction projects by the tribe/consortium paid for with federal funds, except to the extent that improvements to the facilities have been made from other than federal funds.

Prompt Payment Act (Pub. L. 97–452, as Amended)

Tribal view: Tribal representatives note that Pub. L. 103–413, section 403(g), (25 U.S.C. 458cc(g)) gives tribes and consortia the right to receive payments under a self-governance agreement in advance in the form of an annual or semi-annual installment, at the discretion of the tribe or consortium. In addition, this section requires the Secretary to provide funding for BIA and non-BIA programs that are included in a self-governance agreement that are equal to the amount that the tribe or consortium would be eligible to receive under Title I of Pub. L. 103–413. Under section 108 of Title I (25 U.S.C. 450; (l), the Prompt Payment Act is made applicable to all advance payments of funds that are made to tribes under that Title. The Prompt Payment Act should apply to all Department of the Interior programs which tribes may assume under the Tribal Self-Governance Act of 1994, including all BIA and non-BIA programs. No distinction between BIA and non-BIA programs is drawn in Title I of Pub. L. 103–413 and none should be drawn in Title IV of Pub. L.103–413. Accordingly, tribal representatives proposed the following regulation:

Does the Prompt Payment Act apply?

Yes, the Prompt Payment Act applies to all programs funded under the Tribal Self-Governance Act of 1994.

Federal view: The federal team understands that the Prompt Payment Act is generally applicable to the extent goods and services are provided in advance of payment rather than where the payment is made in advance of the delivery. The Prompt Payment Act, (31 U.S.C. 3902(a)), provides in pertinent part: ''* * * the head of an agency acquiring property or service from a business concern, who does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due.'' Congress established, in 31 U.S.C. 3902(h)(2)(B) statutory deadlines addressing the ''required payment or loan closing date'' for various types of transactions. No such statutory deadline is provided for agreements under the Tribal Self-Governance Act of 1994, and the federal team is uncertain of its authority to prescribe or how to prescribe such deadlines for advance payments in the absence of more explicit instructions from Congress. Appropriations law makes it impossible for the Department to distribute funds in advance of the first day of a fiscal year, and delays in bureaus receiving their annual appropriations and resulting funding allocations often also result in delays beyond the Department's control. Prompt payment interest penalties must be derived from ''amounts made available to carry out the program for which the penalty is incurred'' and are not an authorization for additional appropriations (31 U.S.C. 3902(e)). Pub. L. 103–413, 403(g)(3), (25 U.S.C. 458cc(g)(3)) generally requires the bureau to include all funds it would have expended directly or indirectly for that portion of the program, except for functions retained by the bureau either because they are inherently federal or by agreement of the parties. It would appear that Congress has not authorized funds to pay the interest penalty without in turn first directly or indirectly reducing the programs to be provided for that Self-Governance tribe. Moreover, using funds intended for programs for other tribes or tribal organizations would violate Pub. L. 103–413, section 406(a)), (25 U.S.C. 458ff(a)). While the Model Agreement contained in section 108 of the ISDEA (Pub. L. 93–638), as amended provides for the application of the Prompt Payment Act, the Title I regulations (Pub. L. 93–638 (25 U.S.C. 450)) do not contain any language to implement that provision. Thus, the federal team does not know how to implement this provision without reducing funding or programs for the tribe involved, and therefore requests public comments addressing such provisions.

Does the Prompt Payment Act (Pub. L. 97–452, as amended) apply?

Yes, the Prompt Payment Act (Pub. L. 97–452, as amended) applies to programs eligible for contracting under Pub. L. 93–638 (25 U.S.C. 450).

Subpart R—Appeals

Tribal view: The tribal representatives have organized the appeals section to provide a user-friendly format, without extensive internal cross reference. The tribal representatives believe that it is easier to identify the proper appeal forum based on the issue at hand rather than reviewing the different forums available first and then deciding whether the issue at hand fits.

A crucial part of the tribal proposal is that appeals be heard at the level of the Assistant Secretary for the different bureaus. It is the tribal view that the Tribal Self-Governance Act of 1994 vested authority and discretion exclusively in the Secretary of the Interior. Accountability for official decisions should be vested at a similarly high level. Tribal representatives feel it would be inappropriate for appeals to be heard by ''bureau heads'' who would likely be the officials responsible for initial adverse decisions. The purpose of ''appeals'' is review by a higher authority who is removed from the initial dispute. Moving discretionary decision-making down the organizational level of the Department without clear and consistent guideposts for the exercise of discretion should not be permitted below the Assistant Secretary's level. The tribal representatives propose the following:

1. What is the purpose of this subpart?

This subpart prescribes the process for resolving disputes with Department officials which arise before or after execution of an AFA and certain other disputes related to self-governance. This subpart also describes the administrative process for reviewing disputes related to compact provisions. This subpart describes the process for administrative appeals to:

(a) The Interior Board of Indian Appeals (IBIA) for certain pre-AFA disputes and reassumption of programs eligible for contracting under Pub. L. 93–638 (25 U.S.C. 450);

(b) The Interior board of Contract Appeals (IBCA) for certain post-AFA disputes;

(c) The bureau head for the bureau responsible for certain disputed decisions; and

(d) The Secretary for reconsideration of decisions involving self-governance compacts.

2. In general, how can a tribe appeal a decision of a bureau once it has signed an AFA?

The tribes may refer to section 110 of Pub. L. 93–638 which directs them to follow the

procedures found within the Contract Disputes Act Pub. L. 95–563 (41 U.S.C 601)), as amended. Generally, the provisions of section 110 of Pub. L. 93–638 (25 U.S.C. 450m–l) apply to all issues arising from agreements under the Tribal Self-Governance Act of 1994. The tribe may sign an agreement, as well, and reserve issues for appeal under the provisions of section 110. Exceptions are noted below in tribal Question 3.

3. Are there any decisions which are not appealable under this subpart?

Yes. The following types of decisions are not appealable under this subpart.

(a) Decisions regarding requests for waivers of regulations which are addressed in Subpart J of these regulations (Waivers).

(b) Decisions under any other statute, such as the Freedom of Information Act and the Privacy Act. See 43 CFR Part 2.

(c) Decisions for which Subpart K—Construction provides otherwise.

4. How can a tribe appeal a decision of a bureau official relative to a Title I, Pub. L. 93–638 eligible program before it has signed an AFA?

Any bureau decision regarding the self-governance program not governed under the provisions of the Contract Disputes Act pursuant to section 406(c) of Pub. L. 103–413 (25 U.S.C. 458ff(c)), and except those listed under tribal Question 5, may be appealed within 30 days of notification to the IBIA under the provisions of 25 CFR 900.150(a)–(h), and 900.152–900.169. Tribes/consortiums wishing to appeal an adverse decision must do so within 30 days of receiving such decision. For purposes of such appeals only, the terms ''contract'' and ''self-determination contract'' shall mean annual funding agreements under the Tribal Self-Governance Act of 1994. The terms ''tribe'' and ''tribal organization'' shall mean ''tribe/consortium.'' References to the Department of Health and Human Services therein are inapplicable.

5. To whom are appeals directed regarding pre-award AFA decisions of Department officials, other than those described in tribal Question 4?

Using the procedures described in tribal Question 6, the following pre-AFA disputes and decisions are appealable to the Assistant Secretary of the bureau responsible for the decision or dispute:

(a) Decisions regarding non-Title I (non Pub. L. 93–638) eligible programs and disputes over failure to reach an agreement in an AFA negotiation for non-Title I (non Pub. L. 93–638) eligible programs pursuant to section 1000.173 of these regulations (''last and best offer'').

(b) Decisions relating to planning and negotiation grants (Subpart C—Planning and Negotiation Grants);

(c) Decisions involving a limitation and/or reduction of services for BIA programs. (Subpart H—Limitation and/or Reduction of Services for BIA Services, Contracts and Funds);

(d) Decisions regarding the eligibility of a tribe for admission to the applicant pool;

(e) Decisions involving BIA residual functions or inherently federal functions;

(f) Decisions declining to provide requested information on federal programs, budget, staffing, and locations which are addressed in Section 1000.162 of these regulations.

(g) Decisions related to a dispute between a consortium and a withdrawing tribe.

6. How should a tribe/consortium appeal a pre-AFA decision described in tribal Question 5?

A tribe/consortium may appeal such decision by making a written request for review to the appropriate Assistant Secretary within 30 days of failure to reach agreement under section 1000.173. The request should include a statement describing its reasons for requesting the review, with any supporting documentation or indicate that such a statement will be submitted within 30 days. A copy of the request must also be sent to the Director of the Office of Self-Governance.

7. Does the tribe have a right to an informal conference?

Yes. Within 30 days of submitting an appeal to the Assistant Secretary under Question 5 above, the tribe may request an informal conference with the Assistant Secretary or an appointed representative of the Secretary. The Secretary cannot appoint the official whose decision is being appealed as his representative. This conference will be held within 20 days of request, unless otherwise agreed between the parties, and 25 CFR 900.154 to 900.157 will govern the procedure of the informal conference.

8. When must an Assistant Secretary issue a decision in the administrative review?

The Assistant Secretary must issue a written final decision stating the reasons for such decision, and transmit it to the tribe/consortium within 60 days of receipt of the request for review and tribal statement of reasons. The Assistant Secretary's decision shall be final for the Department unless reversed by the Secretary upon a discretionary review in accordance with 43 CFR 4.4.

9. Can a tribe seek reconsideration of the Assistant Secretary's decision?

Yes. The Tribe may request that the Secretary reconsider a final Department decision by sending a written request for reconsideration within 30 days of the receipt of the decision to the Secretary or under 43 CFR 4.4. A copy of this request should also be sent to the Director of the Office of Self-Governance.

10. How can a tribe/consortium seek reconsideration of the Secretary's decision involving a self-governance compact?

A tribe/consortium may request reconsideration of the Secretary's decision involving a self-governance compact by sending a written request for reconsideration to the Secretary within 30 days of receipt of the decision. A copy of this request must also be sent to the Director of the Office of Self-Governance.

11. When will the Secretary respond to a request for reconsideration of a decision involving a self-governance compact?

The Secretary will respond in writing to the tribe/consortium within 30 days of receipt of the tribe/consortium's request for reconsideration.

12. How should a tribe/consortium appeal a Department decision or dispute regarding a signed AFA?

Sections 110 and 406(c) of the Pub. L. 103–413 (25 U.S.C. 450m–l and 458ff(d), respectively) make the Contracts Disputes Act (CDA) (Pub. L. 95–563; 41 U.S.C. 601), as amended applicable to all disputes regarding signed self-governance AFAs, and give tribes/consortiums the right to appeal directly to federal district court or to appeal administratively to the Interior Board of Contract Appeals (IBCA). Administrative appeals regarding post-AFA are governed by 25 CFR 900.216–900.230, except that appeals of decisions regarding reassumption of programs are governed by 25 CFR 900.170–900.176, and except for the types of decisions described in tribal Question 3, which are not appealable under this subpart.

Federal view: The Federal proposals would establish a process for resolving disputes with Department officials which arise both before and after the execution of AFAs. Depending upon the precise matter for which review is sought, appeals of decisions are made to either the IBIA, the IBCA or the head of the particular bureau. Reconsideration of decisions relating to the terms of compacts (as opposed to AFAs) between a tribe/consortium and the Secretary would be submitted to the Secretary. As a general matter, the IBIA would be responsible for appeals relating to pre-award issues and reassumption for imminent jeopardy concerning programs eligible for contracting under Pub. L. 93–638; the IBCA under the Contract Disputes Act (Pub. L. 93–563) for appeals concerning post-award disputes other than reassumption for imminent jeopardy; and bureau heads for matters entailing some degree of discretionary decision-making by an appropriate bureau official. This role for the bureau heads is consistent with normal Departmental practices and also recognizes the generally greater familiarity of bureau heads than the programmatic assistant secretaries for the types of issues to be decided. In accordance with Subpart K of the proposed regulations, appeals from disputes surrounding suspension of work under section 1000.230 of these regulations are made like other post-award disputes under the CDA.

The federal proposal follows:

1. What is the purpose of this subpart?

This subpart prescribes the process for resolving disputes with Department officials

which arise before or after execution of an AFA or as a result of a reassumption of an AFA and certain other disputes related to self-governance. This subpart also describes the administrative process for reviewing disputes related to compact provisions. This subpart describes the process for administrative appeals to:

(a) The Interior Board of Indian Appeals (IBIA) for certain pre-AFA disputes and reassumption of programs eligible for contracting under Pub. L. 93–638 (25 U.S.C. 450);

(b) The Interior Board of Contract Appeals (IBCA) for certain post-AFA disputes;

(c) The bureau head for the bureau responsible for certain disputed decisions; and

(d) The Secretary for reconsideration of decisions involving self-governance compacts.

2. What decisions are appealable to the IBIA?

(a) Except for pre-award matters described in federal Question 5(b)–(d), (f) and (g), decisions of Department officials made before the signing of an AFA under the Tribal Self-Governance Act of 1994 that involve programs eligible for contracting under Pub. L. 93–638 are appealable to the IBIA. The provisions of 25 CFR 900.150(a)–(h), 900.151–900.169 are applicable. For purposes of such appeals only, the terms ''contract'' and ''self-determination contract'' shall mean annual funding agreements under the Tribal Self-Governance Act of 1994. The term ''tribe'' shall mean ''tribe/consortium.'' References to the Department of Health and Human Services therein are inapplicable.

(b) Decisions to reassume a program that is eligible for contracting under Pub. L. 93–638, after the failure of the tribe to adequately respond or mitigate, or decisions to suspend or delay payment for a program that is eligible for contracting under Pub. L. 93–638. The provisions of 25 CFR 900.170 to 900.175 apply, except as otherwise provided in Subpart K—Construction.

(c) If a tribe does not appeal a decision to the IBIA within 30 days of receipt of the decision, the decision will be final for the Department.

3. What decisions are appealable to the Interior Board of Contract Appeals (IBCA) under this section?

Post-award AFA decisions of Department officials are appealable to IBCA, except appeals covered in federal Questions 2(b), 5(c), 5(e), and 5(g) of this subpart and decisions involving reassumption for imminent jeopardy, non-Pub. L. 93–638 programs, and all construction disputes.

4. What statutes and regulations govern resolution of disputes concerning signed AFAs that are appealed to the IBCA?

Section 110 of Pub. L. 93–638 (25 U.S.C. 450m–l) and the regulations at 25 CFR 900.216–900.230 apply to disputes concerning signed AFAs that are appealed to the IBCA, except that any references to the Department of Health and Human Services are inapplicable. For the purposes of such appeals only, the terms ''contract'' and ''self-determination contract'' shall apply to AFAs under the Tribal Self-Governance Act of 1994.

5. What decisions are appealable to the bureau head for review?

(a) Pre-award AFA decisions of Department officials, other than those described in federal Question 2 of this subpart, shall be directed to the bureau head. For example, a review involving a non-Pub. L. 93–638 program.

(b) Decisions of Department officials that a tribe is not eligible for admission to the applicant pool.

(c) Pre-AFA and post-AFA decisions of a Department official, other than a BIA official, on whether an AFA would limit or reduce other AFAs, services, contacts, or funds under Pub. L. 93–638, or other applicable federal law, to an Indian tribe/consortium or tribal organization that is not a party to the AFA.

(d) Decisions involving BIA residual functions. (See sections 1000.91 and 1000.92—BIA AFAs in these draft regulations.)

(e) Decisions involving reassumption for imminent jeopardy for non-Pub. L. 98–638 programs.

(f) Decisions declining to provide requested information on federal programs, budget, staffing, and locations which are addressed in subpart 1000.162 of these regulations.

(g) Decisions related to a dispute between a consortium and a withdrawing tribe (1000.34).

6. When and how must a tribe/consortium appeal a decision to the bureau head?

If a tribe/consortium wishes to appeal a decision to the bureau head it must make a written request for review to the appropriate bureau head within 30 days of receiving the initial adverse decision. The request should include a statement describing its reasons for requesting a review, with any supporting documentation or indicate that such a statement will be submitted within 30 days. A copy of the request must also be sent to the Director of the Office of Self-Governance.

If a tribe does not request a review within 30 days of receipt of the decision, the decision will be final for the Department.

7. When must the bureau head issue a decision in the administrative review?

The bureau head must issue a written final decision stating the reasons for such decision, and transmit it to the tribe/consortium within 60 days of receipt of the request for review and the statement of reasons.

8. What is the effect of the bureau head's decision in an administrative review?

The decision is final for the Department.

9. May tribes/consortia appeal Department decisions to a U.S. District Court?

Yes. Tribes/consortia may choose to appeal decisions of Department officials relating to the self-governance program to a U.S. Court, as authorized by section 110 of Pub. L. 93–638 (25 U.S.C. 450m–l) , or other applicable law.

10. How can a tribe/consortium seek reconsideration of the Secretary's decision involving a self-governance compact?

A tribe/consortium may request reconsideration of the Secretary's decision involving a self-governance compact by sending a written request for reconsideration within 30 days of receipt of the decision to the Secretary. A copy of this request must also be sent to the Director of the Office of Self-Governance.

11. When will the Secretary respond to a request for reconsideration of a decision involving a self-governance compact?

The Secretary will respond in writing to the tribe/consortium within 30 days of receipt of the tribe/consortium's request for reconsideration.

12. Are there any decisions which are not appealable under this section?

Yes. The following types of decisions are not appealable under this subpart:

(a) Decisions regarding requests for waivers of regulations which are addressed in Subpart J of these regulations. (Waivers)

(b) Decisions relating to planning and negotiation grants in section 1000.71 of these regulations. Subpart D—Other Financial Assistance for Planning and Negotiation Grants for Non-BIA Programs.

(c) Decisions relating to discretionary grants under section 103 of Pub. L. 93–638 (25 U.S.C. 450h) which may be appealed under 25 CFR Part 2.

(d) Decisions under any other statute, such as the Freedom of Information Act and the Privacy Act. See 43 CFR Part 2.

(e) Decisions involving a limitation and or reduction of service for BIA programs. Subpart H—Limitation and/or Reduction of Services for BIA Services, Contracts, and Funds.

(f) Decisions for which Subpart K—Construction provides otherwise.

13. What procedures apply to post-award construction disputes except for reassumptions for imminent jeopardy?

The Contract Disputes Act procedures (Pub. L. 95–593 (41 U.S.C. 601), as amended)

Subpart S—Property Donation Procedures

Tribal view: Section 406(c) of Title IV (Pub. L. 103–413; 25 U.S.C. 458ff (c)) specifically incorporates section 105(f) of Pub. L. 93–638 (25 U.S.C. 450; (f)), a provision which gives tribes significant rights relating to the transfer of BIA and non-BIA property to tribes for use under a contract or AFA. In June 1996, the Departments of the Interior and Health and Human Services promulgated joint regulations implementing Pub. L. 93–638, including section 105(f). See 25 CFR 900 *et seq.* The regulations make clear that transfer of property under section 105(f) applies to BIA and non-BIA property.

The regulations promulgated under Pub. L. 93–638 implementing section 105(f) apply equally to Title IV—for

both BIA and non-BIA programs. Tribal representatives proposed regulations that closely tracked 25 CFR 900.85–900.107.

Government-Furnished Property

1. How does an Indian tribe/consortium obtain title to property furnished by the federal government for use in the performance of a self-governance agreement pursuant to section 105(f)(2)(A) of Pub. L. 93–638 (25 U.S.C. 450; (f))(2)(A)?

(a) For federal government-furnished personal property made available to an Indian tribe/consortium before October 25, 1994:

(1) The Secretary, in consultation with each Indian tribe/consortium, shall develop a list of the property used in a self-governance agreement.

(2) The Indian tribe/consortium shall indicate any items on the list to which the Indian tribe/consortium wants the Secretary to retain title.

(3) The Secretary shall provide the Indian tribe/consortium with any documentation needed to transfer title to the remaining listed property to the Indian tribe/consortium.

(b) For federal government-furnished real property made available to an Indian tribe/consortium before October 25, 1994:

(1) The Secretary, in consultation with the Indian tribe/consortium, shall develop a list of the property furnished for use in a self-governance agreement.

(2) The Secretary shall inspect any real property on the list to determine the presence of any hazardous substance activity, as defined in 41 CFR 101–47.202.2(b)(10). If the Indian tribe/consortium desires to take title to any real property on the list, the Indian tribe/consortium shall inform the Secretary, who shall take such steps as necessary to transfer title to the Indian tribe/consortium.

(c) For federal government-furnished real and personal property made available to an Indian tribe/consortium on or after October 25, 1994:

(1) The Indian tribe/consortium shall take title to all property unless the Indian tribe/consortium requests that the United States retain the title.

(2) The Secretary shall determine the presence of any hazardous substance activity, as defined in 41 CFR 101–47.202.2(b)(10).

2. What should the Indian tribe/consortium do if it wants to obtain title to federal government-furnished real property that includes land not already held in trust?

If the land is owned by the United States but not held in trust for an Indian tribe or individual Indian, the Indian tribe/consortium shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of a tribe.

(a) If the Indian tribe/consortium requests fee title, the Secretary shall take the necessary action under federal law and regulations to transfer fee title.

(b) If the Indian tribe/consortium requests beneficial ownership with fee title to be held by the United States in trust for an Indian tribe:

(1) The Indian tribe/consortium shall submit with its request a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(2) The Secretary of the Interior shall expeditiously process all requests in accordance with applicable federal law and regulations.

(3) The Secretary shall not require the Indian tribe/consortium to furnish any information in support of a request other than that required by law or regulation.

3. When may the Secretary elect to reacquire federal government-furnished property whose title has been transferred to an Indian tribe/consortium?

(a) Except as provided in paragraph (b) of this section, when a self-governance agreement, or portion thereof, is retroceded, reassumed, terminated or expires, the Secretary shall have the option to take title to any item of federal government-furnished property for which:

(1) title has been transferred to an Indian tribe/consortium;

(2) is still in use in the program; and

(3) has a current fair market value, less the cost of improvements borne by the Indian tribe/consortium, in excess of $5,000.

(b) If property referred to in paragraph (a) of this section is shared between one or more ongoing self-governance agreements and a self-governance agreement is retroceded, reassumed, terminated or expires, and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the Indian tribe/consortium using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

4. Does government-furnished real property to which an Indian tribe/consortium has taken title continue to be eligible for facilities operation and maintenance funding from the Secretary?

Yes.

Property Purchased by an Indian Tribe/Consortium

5. Who takes title to property purchased with funds under a self-governance agreement pursuant to section 105(f)(2)(A) of Pub. L. 93–638 (25 U.S.C. 450j (f)(2)(A))?

The Indian tribe/consortium takes title to such property, unless the Indian tribe/consortium chooses to have the United States take title. In that event, the Indian tribe/consortium must inform the Secretary of the purchase and identify the property and its location in such manner as the Indian tribe/consortium and the Secretary deem necessary. A request for the United States to take title to any item of Indian tribe/consortium-purchased property may be made at any time. A request for the Secretary to take fee title to real property shall be expeditiously processed in accordance with applicable federal law and regulation.

6. What should the Indian tribe/consortium do if it wants Indian tribe/consortium-purchased real property that it has purchased to be taken into trust?

The Indian tribe/consortium shall submit a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered. The Secretary of the Interior shall expeditiously process all requests in accord with applicable federal law and regulation.

7. When may the Secretary elect to acquire title to Indian tribe/consortium-purchased property?

(a) Except as provided in paragraph (b) of this section when a self-governance agreement, or portion thereof, is retroceded, reassumed, terminated or expires, the Secretary shall have the option to take title to any item of tribe/consortium-purchased property:

(1) Whose title has been transferred to an Indian tribe/consortium;

(2) That is still in use in the program; and

(3) That has a current fair market value, less the cost of improvements borne by the Indian tribe/consortium, in excess of $5,000.

(b) If property referred to in paragraph (a) of this section is shared between one or more ongoing self-governance agreements and a self-governance agreement that is retroceded, reassumed, terminated or expires, and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the Indian tribe/consortium using such property

shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

8. Is Indian tribe/consortium-purchased real property to which an Indian tribe/consortium holds title eligible for facilities operation and maintenance funding from the Secretary?

Yes.

Tribal representatives believe that the federal position misinterprets section 105(f) (25 U.S.C. 450j(f)) and is incorrect in any conclusion that section 105(f) does not apply to non-BIA property. Initially, it should be pointed out that the federal representatives position is inconsistent with the position taken by the Department of the Interior during the Title I (Pub. L. 93–638) rulemaking process—the final rules promulgated in 25 CFR sections 900.87–900.94 clearly apply to non-BIA, as well as BIA, programs. There is no reason why the Department should change this interpretation in Title IV; doing so would violate Congressional direction that self-governance ''co-exist'' with the Self-Determination Act (see section 203 of Title IV (Pub. L. 103–413) and section 1000.4(b)(3) of the proposed regulations). Clearly, if regulations implementing the same statutory provisions under Title I conflict with regulations under Title IV, the two titles do not ''co-exist,'' they ''conflict.''

The federal representatives argument is based on an incorrect reading of section 105(f)(2). First, section 105(f)(2) provides that the Secretary ''may'' ''donate'' IHS, BIA, or GSA property—clearly a discretionary act, while section 105(f)(2)(A) provides that title to property and equipment furnished by the federal government, ''shall vest'' in the tribe, clearly a command where the Secretary has no discretion.

It is evident from the different language used in these two provisions that they have very different purposes; they address different types of property and give the Secretary some or no discretion. Furthermore, if Congress wanted to limit section 105(f)(2)(A) to GSA, IHS, and BIA property, as the federal representatives assert, it would have said so in the section. The use of ''government-furnished property'' clearly indicated an intent to refer to property other than GSA, IHS, or BIA. Finally, the term ''except'' can grammatically be read as a signal that the contents of section 105(f)(2)(A) are not subject to the limitations set forth in section 105(f)(2), which would as the federal representatives assert, give meaning to every word in the statute.

Federal view: It is the federal team's view that section 105(f)(2)(A) of Pub. L. 93–638 (25 U.S.C. 450j(f)(2)(A)) does not apply to non-BIA bureaus.

Prior to the 1994 amendments, section 105(f)(2) of Pub. L. 93–638 gave the Secretary discretion to donate personal BIA excess property, including contractor-purchased property as one type of ''excess'' BIA property:

> (f) In connection with any self-determination contract or grant made pursuant to section 102 or 103 of this Act, the appropriate Secretary may—
>
> (2) donate to an Indian tribe or tribal organization the title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, *including property and equipment purchased with funds under any self-determination contract or grant agreement;* and (emphasis added)

But, as the legislative history of section 2(12) of S. 2036 (the Senate Bill section which revised section 105(f)(2)(A), (B) and (C)) indicates, Congress decided to treat contractor-purchased property and federal government-furnished property exactly the same as under federal grant procedures:

> Section 2(12) amends section 105(f)(2) to address both the acquisition of property with contract funds after a contract has been awarded and also the management of government-furnished property. Currently, standard grant regulations provide that title to property purchased with grant funds vests in the grantee. The amendment extends the same policy to property purchased with self-determination contract funds. The policy reasons underlying the Self-Determination Act strongly counsel in favor of such a regime, and the amendment eliminates the need for a technical ''donation'' of the property in such circumstances. At the same time, the amendment provides a mechanism for the return of property still in use to the Secretary, in the event a contracting program is retroceded back to the federal government. Finally, in conjunction with Paragraph 1(b)(7) of the model contract set forth in section 3 of the bill, the amendment assures that, although title to such property will vest in the tribe or tribal organization, the Secretary is to treat such property in the same manner for purposes of replacement as he or she would have had title to the property vested of the government. S. Rpt. No. 103–374, 103d Cong., 2d Sess. 7 (1994).

Thus, section 105(f)(2)(A) of Pub. L. 93–638 (25 U.S.C. 450j (f)(2)(A)) now gives title to a tribe just as grant procedures give title to a grantee. Also, Congress eliminated the need to go through time consuming donation procedures applicable to other excess property and allow for automatic vesting of title at the option of the tribe for contractor-purchased and federal government-furnished property. There was no intent to change the agencies to which these provisions applied; i.e., BIA, IHS, and GSA, and indeed, no such change was made.

The significance of this modification of section 105(f)(2) of Pub. L. 93–638 is that the recrafting of section 105(f)(2)(A) continued to be limited to BIA, IHS and GSA:

> (f) In connection with any self-determination contract or grant made pursuant to section 102 or 103 of this Act, the appropriate Secretary may—
>
> (2) donate to an Indian tribe or tribal organization title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, except that—
>
> ''(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the contract or purchased with funds under any self-determination contract or grant agreement shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization;

Had Congress intended to change the clear limitation of the pre-1994 Amendment language of section 105(f)(2) of Pub. L. 93–638 to include non-BIA bureaus, it surely would have modified this continued reference to only BIA, IHS, and GSA in this section. However, it did not. While making a significant change by allowing title to automatically pass to tribes for contractor-purchased and federal government-furnished excess property, it made absolutely no change to the above-referenced agencies to which these rights apply. Even though section 105(f)(2)(A) refers to the ''Federal Government'' and ''any self-determination contract'' this subsection must be read within the context of its antecedent parent clause in subsection (2), which limits applicability to only the BIA, IHS, and GSA. This is the most reasonable interpretation of these provisions. To do otherwise, would require reading the terms ''Bureau of Indian Affairs, Indian Health Service, and General Services Administration'' completely out of section 105(f)(2), (25 U.S.C. 450j(f)(2), when interpreting subsection (A) of section 105(f)(2). This would certainly ignore the mandate of statutory interpretation to give meaning to all words of a statute.

In addition, the term ''except'' preceding ''(A),'' is defined in Webster's Collegiate Dictionary to mean ''to take out from a number or whole,'' i.e., a part of the whole. Thus, the whole is section 105(f)(2), which applies to BIA, IHS, and GSA, and ''A'' is part of section

105(f)(2) and is also limited to BIA, IHS, and GSA.

Furthermore, the legislative history for this section, as discussed above, indicates it was intended that title to property purchased with contract funds or furnished by the federal government should vest ''automatically'' and the amendment eliminates the need for a technical donation of the property. Thus, the Congressional intent was that donation procedures should be avoided for federal government-furnished and contract-funded property. Clearly, paragraphs (A), (B), and (C) were not stand-alone provisions, but were an integral part of subsection (2), in order to limit ''donation'' procedures in subsection (2) to only excess property, while providing the automatic vesting concept in paragraph (A) for federal government-furnished and contract-funded property. Therefore, it also follows that paragraphs (A), (B), and (C), like subsection (2), apply only to the agencies referenced in subsection (2); i.e., BIA, IHS, and GSA.

Nor do we agree with the tribal representatives that subpart I of Pub. L. 93–638 regulations, published on June 24, 1996, resolved the issue of applicability of section 105(f)(2)(A), (25 U.S.C. 450j (f)(2)(A)) to non-BIA bureaus. The 25 CFR sections 900.87 and 900.91 refer only to title transfers when section 105(f)(2)(A) applies, but do not state to which bureaus section 105(f)(2)(A) does apply. The Pub. L. 93–638 rulemaking therefore left open for litigation whether it applies to non-BIA bureaus. The Department of the Interior believes that section 105(f)(2)(A) does not apply to non-BIA programs under the Tribal Self-Governance Act of 1994 or Pub. L. 93–638.

The Tribal Self-Governance Act of 1994 does not authorize and other statutes prohibit the transfer of title to non-BIA real property. For example, nothing in that Act provides a basis for transferring title from the United States to a Self-Governance tribe of a portion of a national park or a national wildlife refuge because an AFA permits a tribe to administer a program within a park or refuge under section 403(c), (25 U.S.C. 458cc(c)) of the Act. An AFA with BLM to conduct cadastral survey work in Alaska relating to conveyances for Native allotments would not permit the transfer of title to such property to the Self-Governance tribe/consortium. Similarly, federal reclamation law prohibits the transfer of title to reclamation projects without the specific approval of Congress.

Summary of Regulations

Subpart A—General Provisions

This subpart contains the Congressional policy as stated in the Tribal Self-Governance Act of 1994 and adds the Secretarial policy that will guide the implementation of the Act by the Secretary and the various bureaus of the Department of the Interior. The subpart also defines terms used throughout the rule.

Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

This subpart describes the steps a tribe/consortium must take to participate in tribal self-governance and how a tribe can withdraw from a consortium's AFA. Under the Act, a tribe/consortium must first be admitted into the applicant pool and then be selected for participation. The applicant pool contains those tribes/consortia that the Director of the Office of Self-Governance (OSG) has determined are eligible to participate in self-governance.

The Director, OSG may select up to 50 tribes or consortia of tribes from the applicant pool for negotiation. If there are more tribes in the applicant pool than are to be selected to negotiate in any given year, the Director will choose tribes/consortia based upon the earliest postmark date of completed applications.

The rule also stipulates that a tribe/consortium may be selected to negotiate an AFA for non-BIA programs that are otherwise available to Indian tribes without first negotiating an AFA for BIA programs. However, to negotiate for a non-BIA program under Pub. L. 103–413, section 403(c), (25 U.S.C. 458cc(c)) for which the tribe/consortium has only a geographic, cultural, or historical connection, the Act requires that the tribe/consortium must first have an AFA with the BIA, under section 403(b)(1) Pub. L. 103–413; (25 U.S.C. 458cc(b)(1)) or any non-BIA bureau under section 403(b)(2), (25 U.S.C. 458cc(b)(2)). (The term ''programs'' as used in the rule and in this preamble refers to complete or partial programs, services, functions, or activities.)

Subpart B also describes what happens when a tribe wishes to withdraw from a consortium's AFA. In such instances, the withdrawing tribe must notify the consortium, appropriate DOI bureau, and OSG of its intent to withdraw 180 days before the effective date of the next AFA. Unless otherwise agreed to, the effective date of the withdrawal will be the date on which the current agreement expires.

In completing the withdrawal, the consortium's AFA must be reduced by that portion of funds attributable to the withdrawing tribe on the same basis or methodology upon which the funds were included in the consortium's AFA. If such a basis or methodology does not exist, then the tribe, consortium, appropriate DOI bureau, and OSG must negotiate an appropriate amount. A tribe may not withdraw from a consortium's AFA in any other part of the year unless all parties agree.

Subpart C—Section 402(d) Planning and Negotiation Grants

Subpart C describes the criteria and procedures for awarding various self-governance negotiation and planning grants. These grants are discretionary and will be awarded by the Director of the OSG. The award amount and number of grants depends upon Congressional appropriation. If funding in any year is insufficient to meet total requests for grants and financial assistance, priority will be given first to negotiation grants and second to planning grants.

Negotiation grants are non-competitive. In order to receive a negotiation grant, a tribe/consortium must first be selected from the applicant pool and then submit a letter affirming its readiness to negotiate and requesting a negotiation grant. This subpart also indicates that tribe/consortium may also elect to negotiate for a self-governance agreement if selected from the applicant pool without applying for or receiving a negotiation grant. Planning grants will be awarded to tribes/consortia requesting financial assistance in order to complete the planning phase requirement for admission into the applicant pool.

Subpart D—Other Financial Assistance for Planning and Negotiating Grants for Non-BIA Programs

This subpart describes the other financial assistance for planning and negotiating non-BIA programs available to any tribe/consortium that:

(a) Has an existing AFA;

(b) Is in the applicant pool; or

(c) Has been selected from the applicant pool.

Tribes/consortia may submit only one application per year for a grant under this subpart. This financial assistance will support information gathering, analysis, and planning activities that may involve consulting with appropriate non-BIA bureaus, and negotiation activities.

Subpart D outlines what must be submitted in the application and the criteria used to rank the applications.

Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs

This subpart describes the components of an Annual Funding Agreement (AFA) for BIA programs. An AFA is a legally binding and mutually enforceable written agreement between a self-governance tribe/consortium and the BIA. It specifies the programs that are to be performed by the BIA as inherently federal functions, programs transferred to the tribe/consortium, and programs retained by the BIA to carry out for the self-governance tribe. The division of the responsibilities between the tribe/consortium and the BIA is to be clearly stated in the AFA.

Subpart E states that a tribe/consortium may include BIA-administered programs in its AFA regardless of the BIA agency or office that performs the program. The Secretary must provide to the tribe/consortium:

(a) Funds equal to what the tribe/consortium would have received under contracts and grants under Title I of Pub. L. 93–638 (25 U.S.C. 450);

(b) Any funds specifically or functionally related to providing services to the tribe/consortium by the Secretary; and

(c) Any funds that are otherwise available to Indian tribes for which appropriations are made to other agencies other than the Department of the Interior.

Except for construction, a tribe/consortium may redesign a program without approval from the BIA except when the redesign first requires a waiver of a Departmental regulation. Redesign does not entitle tribes/consortia to an increase in the negotiated funding amount.

In determining the funding amount to be included in an AFA, this subpart defines residual funds as those funds needed to carry out the inherently federal functions of the BIA should all tribes assume programmatic responsibility. The residual level will be determined through a process that is consistent with the overall process used by the BIA.

The subpart defines tribal shares as the amount determined for that tribe/consortium from a particular program. Tribal share amounts may be determined by either:

(a) A formula that has a reasonable basis in the function or service performed by the BIA office and is consistently applied to all tribes served by the area and agency offices; or

(b) On a tribe-by-tribe basis, such as awarded competitive grants or special project funding.

Funding amounts may be adjusted while the AFA is in effect in order to adjust for certain Congressional actions, correct a mistake, or if there is mutual agreement. During the year, a tribe/consortium may reallocate funds between programs without Secretarial approval.

This subpart also defines base budgets as the amount of recurring funding identified in the annual budget of the President as adjusted by Congressional action. Base budgets are derived from:

(a) A tribe/consortium's Pub. L. 93–638 contract amounts;

(b) Negotiated amounts of agency, area, and central office funding;

(c) Other recurring funding;

(d) Special projects, if applicable;

(e) Programmatic shortfall; and

(f) Any other general increases/decreases to tribal priority allocations that might include pay, retirement, or other inflationary cost adjustments.

Base budgets do not include any non-recurring program funds, Congressional earmarks, or other funds specifically excluded by Congress.

If a tribe/consortium had funding amounts included in its base budgets or was base eligible before these regulations, the tribe/consortium may retain the amounts previously negotiated. Once base budgets are established, a tribe/consortium need not renegotiate these amounts unless it wants to. If the tribe/consortium wishes to renegotiate, it also would be required to renegotiate all funding included in the AFA on the same basis as all other tribes.

Subpart F—Non-BIA Annual Self-Governance Compacts and Funding Agreements

This subpart describes program eligibility, funding for, and terms and conditions relating to AFAs covering non-BIA programs. This subpart also establishes procedures for consultation with tribes for preparation of an annual listing in the **Federal Register** of non-BIA programs that are eligible for negotiation by self-governance tribes. Although the committee reached a consensus on most of the provisions pertaining to AFAs for non-BIA programs, no agreement was reached on several questions concerning program eligibility. See the explanation of matters in disagreement found elsewhere in this preamble.

Sections 1000.112 through 1000.125 of these proposed regulations contain rules on the eligibility of programs for inclusion in AFAs. Under the Tribal Self-Governance Act of 1994, non-BIA programs are eligible for negotiation and inclusion in AFAs based on either section 403(b)(2), (25 U.S.C. 458cc(b)(2)) (pertaining to programs available to Indians), or section 403(c), (25 U.S.C. 458cc(c)) (pertaining to programs of special geographic, historical, or cultural significance to the participating tribe/consortium).

These provisions reflect the discretion afforded by the Act with respect to the terms or eligibility of non-BIA programs for inclusion in AFAs, as compared to agreements covering BIA programs. For instance, section 403(b)(2) authorizes a non-BIA bureau to negotiate terms that it may require in AFAs and section 403(b)(3) allows redesign and consolidation of non-BIA programs or reallocation of funds when the parties agree.

Sections 1000.126 through 1000.131 of these proposed regulations describe how AFA funding is determined. Programs that would be eligible for self-determination contracts under Title I of the Indian Self-Determination and Education Assistance Act (ISDEA) (Pub. L. 93–638, as amended) are to be funded at the same level as required for self-determination contracts.

Programs which are only available because of a special geographic, historical, or cultural significance eligible under section 403'' of the Tribal Self-Governance Act of 1994 are not eligible for self-determination contracting. The regulations provide that such programs generally are to be funded at the level that would have been spent by the bureau to operate the program, plus provisions for allowable indirect costs. The latter are generally based on rates negotiated by the Department of the Interior Inspector General, or the Inspector General of another applicable federal agency.

Subpart G—Negotiation Process for Annual Funding Agreements

This subpart establishes the process and time lines for a newly selected or participating tribe/consortium wishing to negotiate either an initial or a successor AFA with any DOI bureau. Under subpart G, the negotiation process consists of two phases, an information phase and a negotiation phase.

In the information phase, any tribe/consortium that has been admitted to the self-governance program or to the applicant pool may submit requests for information concerning programs they wish to administer under the Tribal Self-Governance Act of 1994. Although this phase is not mandatory, it is expected to facilitate successful negotiations by providing for a timely exchange of information on the requested programs.

The negotiation phase establishes detailed time lines and procedures for conducting negotiations with tribes that have been accepted into the self-governance program, identifying the responsibilities of the tribe/consortium and bureau representatives in the negotiation process, and for executing AFAs.

The proposed deadlines for the negotiation process were chosen by the committee to reflect the availability of annual budget information and the time needed for the bureau and the tribe/consortium to reach an agreement and the requirement under the Tribal Self-Governance Act of 1994 that each AFA must be submitted for Congressional review at least 90 days before its proposed effective date.

This subpart also establishes, in sections 1000.173 through 1000.175, rules for the negotiation process for successor AFAs. A successor agreement is a funding agreement negotiated with a particular bureau after an initial agreement with that bureau. The procedures for negotiating a successor agreement are the same as those for initial agreements. The committee expects, however, that successor agreements will build upon the prior agreements and will result in an expedited and simplified negotiation process.

The model compact serves as an umbrella document to recognize the government-to-government relationship between the tribe(s) and the Department. Self-governance tribes may choose to execute a compact with the Secretary but are not required to do so in order to enter into AFAs with Departmental bureaus. A model self-governance compact is provided in Appendix A. The model compact is not the same as an AFA and is not intended to replace, duplicate or lessen the importance of the AFA. Proposed section 1000.153 permits the parties to agree to additional terms and conditions for inclusion in compacts.

The Committee agreed that for BIA programs only, a tribe/consortium may elect to continue under the terms of its pre-regulation compact as long as those provisions are in compliance with other federal laws and are consistent with these regulations. For BIA programs, a tribe/consortium may include any term that may be included in a contract under Title I (Pub. L. 93–638; 25 U.S.C. 450) in the model compact.

Subpart H—Limitation and/or Reduction of Services, Contracts, and Funds

This subpart describes the process used by the Secretary to determine whether the implementation of an AFA will cause a limitation or reduction in services, contracts or funds to any other Indian tribe/consortium or tribal organization as prohibited by section 406(a) of Pub. L. 93–638 (25 U.S.C. 458ff(a)). Subpart H applies only to BIA programs and does not apply to the general public and non-Indians.

The BIA may raise the issue of limitation and/or reduction of services, contracts, or funding to other tribes from the beginning of the negotiation period until the end of the first year of implementation of the AFA. An adversely affected tribe/consortium may raise the issue of limitation or reduction of services, contracts, or funding during area wide tribal shares meetings before the first year of implementation, within the 90-day review period before the effective date of the AFA, and during the first year of implementation of the AFA. Claims not filed on time are barred.

A claim by either the Department or an adversely affected tribe/consortium or tribal organization must be a written notification that specifies the alleged limitation or reduction of services, contracts, or funding. If a limitation and/or reduction exists, then the BIA must use shortfall funding, supplemental funding, or other available BIA resources to prevent the reduction during the existing AFA year. The BIA may, in a subsequent AFA, adjust the funding to correct a finding of actual reduction in services, contracts, or funds for that subsequent year. All adjustments under this subpart must be mutually agreed to between BIA and the tribe/consortium.

Subpart I—Public Consultation Process

This subpart describes when public consultation is appropriate and the protocols that should be used in this process. The roles of the tribe/consortium and the bureau are outlined, including notification procedures and the commitment to share information concerning inquiries about AFAs.

Public consultation is used when required by law or when appropriate under bureau discretion. When the law requires a public consultation process, the bureau will include the tribe/consortium to the maximum extent possible. When a public consultation process is a matter of bureau discretion, the bureau and the tribe/consortium may develop guidelines for the conduct of public meetings.

When the bureau conducts a public meeting, it must notify the tribe/consortium and involve the tribe/consortium in as much of the conduct of the meeting as is practicable and allowed by law. When someone other than the bureau conducts a meeting to discuss a particular AFA and the bureau is invited to attend, the bureau will notify the tribe/consortium of the invitation and encourage the meeting sponsor to invite the tribe/consortium to participate.

The bureau and the tribe/consortium will exchange information about other inquiries relating to the AFA under negotiation from other affected or interested parties.

Subpart J—Waiver of Regulations

This subpart implements section 403(I)(2)(A) of the Tribal Self-Governance Act of 1994 (25 U.S.C. 458cc(I)(2)(A)). It authorizes the Secretary to waive all DOI regulations governing programs included in an AFA, as identified by the tribe/consortium.

Subpart J also provides time lines, explains how a tribe/consortium applies for a waiver, the basis for granting or denying a waiver request, the documentation requirements for a decision, and establishes a process for reconsideration of the Secretary's denial of a waiver request.

The basis for the Secretary's denial of a waiver request depends on whether the request is made for a BIA or non-BIA program. For a BIA program, denial of a requested waiver must be predicated on a prohibition of federal law. For a non-BIA program, denial of a requested waiver must be predicated on a prohibition of federal law, or inconsistency with the express provisions of the AFA. Examples of waivers prohibited by law are provided in the body of the proposed regulation.

No consensus was reached with respect to the time limit by which the Secretary must approve or deny a waiver request. For a brief discussion on this point, see the discussion of areas of disagreement elsewhere in this preamble.

Subpart K—Construction

Subpart K applies to all construction, both BIA and non-BIA. It is designed as a stand-alone Subpart; that is, other subparts do not apply to construction agreements if they are inconsistent with the provisions in Subpart K. The Subpart specifies which construction program activities are subject to Subpart K, such as design, construction management services, actual construction; and which are not, such as planning services, operation and maintenance activities, and certain construction programs that cost less than $100,000. The Subpart specifies the roles and responsibilities of the

tribes and the Secretary in construction programs, including performance, changes, monitoring, inspections, and a special reassumption provision for construction. It addresses whether inclusion of a construction program in an AFA creates an agency relationship with self-governance tribes.

Federal Acquisition Regulations provisions are specifically not incorporated into these regulations, however, they may be negotiated by the parties in the AFA. Also, construction AFAs must address applicable federal laws, program statutes, and regulations. In addition to requirements for all AFAs referenced in Subpart F, other special provisions are added for construction programs, including health and safety standards, brief progress reports, and suspension of work when appropriate. Building codes appropriate for the project must be used and the federal agency must notify the tribe when federal standards are appropriate for any project.

Subpart L—Federal Tort Claims

This subpart explains the applicability of the Federal Tort Claims Act.

Subpart M—Reassumption

Reassumption is the federally initiated action of reassuming control of federal programs formerly performed by a tribe. Subpart M explains the types of reassumption authorized under the Tribal Self-Governance Act of 1994, including the rights of a consortium member, the types of circumstances necessitating reassumption, and Secretarial responsibilities including prior notice requirements and other procedures.

Subpart M also describes activities to be performed after reassumption has been completed, such as authorization for ''windup'' costs, tribal obligations regarding the return of federal property to the Secretary, and the effect of reassumption on other provisions of an AFA.

Subpart N—Retrocession

Retrocession is the tribally initiated action of returning control of certain programs to the federal government. Subpart N defines retrocession, including how tribes may retrocede, the effect of retrocession on future AFA negotiations, and tribal obligations regarding the return of federal property to the Secretary after retrocession.

Subpart O—Trust Evaluation Review

Subpart O establishes a procedural framework for the annual trust evaluation mandated by the Tribal Self-Governance Act of 1994. The purpose of the annual trust evaluation is to ensure that trust functions assumed by tribes/consortia are performed in a manner that does not place trust assets in imminent jeopardy.

Imminent jeopardy of a physical trust asset or natural resource (or their intended benefits) exists where there is an immediate threat and likelihood of significant devaluation, degradation, or loss to such asset. Imminent jeopardy to public health and safety means an immediate and significant threat of serious harm to human well-being, including conditions that may result in serious injury, or death, caused by tribal action or inaction or as otherwise provided in an annual funding agreement.

Subpart O requires the Secretary's designated representative to prepare a written report for each AFA under which trust functions are performed by a tribe. The regulation also authorizes a review of federal performance of residual and nondelegable trust functions affecting trust resources.

Subpart P—Reports

This subpart describes the report on self-governance that the Secretary prepares annually for transmittal to Congress. It includes the requirements for the annual report that tribes submit to the Secretary.

Subpart Q—Miscellaneous Provisions

This subpart addresses many facets of self-governance not covered in the other subparts. Issues covered include the applicability of various laws and OMB circulars, how funds are handled in various situations, and the relationship between employees of the tribe/consortium and employees of the federal government.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This proposed rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities as the term is defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

The Department has determined that this rule does not have significant ''takings'' implications. The 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 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 Compliance

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Federal Paperwork Reduction Act

In accordance with 44 U.S.C. 3507(d), the OSG has submitted the information collection and recordkeeping requirements of 25 CFR Part 1000 to the Office of Management and Budget (OMB) for review and approval.

25 CFR Part 1000

Title: Annual Funding Agreements Under the Tribal Self-Governance Act Amendments to the Indian Self-Determination and Education Act.

OMB Control Number: Not yet assigned.

Abstract: The Department of the Interior and Indian government representatives developed a rule to implement section 407 of Pub. L. 103–413, the Tribal Self-Governance Act of 1994. As required by section 407 of the Act, the Secretary, upon request of a majority of the Self-Governance tribes, initiated procedures under subchapter III of Chapter 5 of title 5, United States Code, to negotiate and promulgate regulations that are necessary to carry out title IV. This rule will allow the Department to negotiate annual funding agreements with Self-Governance tribes for programs, services, functions and activities conducted by the Department. The Department developed this negotiated rulemaking with active tribal participation, and it contains the proposed information collection.

Need for and Use: The information provided by the Tribes will be used by the Department of the Interior for a variety of purposes. The first purpose will be to ensure that qualified applicants are admitted into the applicant pool consistent with the requirements of the Act. In addition,

tribes seeking grant assistance to meet the planning requirements for admission into the applicant pool, will provide information so that grants can be awarded to tribes meeting basic eligibility (i.e. tribal resolution indicating that the tribe wants to plan for Self-Governance and have no material audit exceptions for the last three years). Other documentation is required to meet the reporting requirements as called for in Section 405 of the Act.

Respondents: Tribes and Tribal Consortiums which may be affected by self-governance activities or request funding for projects or services.

Total Annual Burden: Refer to proposed 25 CFR 1000.3 for a detailed table of the burden estimates anticipated by this rulemaking.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the Department of the Interior, including whether the information will have practical utility;

(b) The accuracy of the OSG'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 collection on the respondents.

Under the Paperwork Reduction Act, the OSG must obtain OMB approval of all information and recordkeeping requirements. No person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. This number will appear in 25 CFR 1000.3 upon approval. To obtain a copy of the OSG's information collection clearance requests, explanatory information, and related form, contact the Information Collection Clearance Officer, Office of Self-Governance, at (202) 219–0240.

By law, the OMB must submit comments to the OSG within 60 days of publication of this proposed rule, but may respond as soon as 30 days after publication. Therefore, to ensure consideration by the OMB, please send comments regarding these burden estimates or any other aspect of these information collection and recordkeeping requirements by March 16, 1998, to the Information Collection Clearance Officer, Office of Self-Governance, Room 2542, 1849 C Street, NW., Washington, DC 20240, and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503.

Unfunded Mandates Act of 1995

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.

List of Subjects in 25 CFR Part 1000

Grant programs—Indians, Indians.

For the reasons set out in the preamble, the Department of the Interior proposes to establish a new part 1000 in chapter VI of title 25 of the Code of Federal Regulations as set forth below.

Dated: February 3, 1998.

Bruce Babbitt,

Secretary of the Interior.

PART 1000— ANNUAL FUNDING AGREEMENTS UNDER THE TRIBAL SELF-GOVERNMENT ACT AMENDMENTS TO THE INDIAN SELF-DETERMINATION AND EDUCATION ACT

Subpart A—General Provisions

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Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

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1000.54 How will a tribe/consortium know whether or not it has been selected to receive an advance planning grant?
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Subpart D—Other Financial Assistance for Planning and Negotiations Grants for Non-BIA Programs

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1000.63 Under what circumstances may planning and negotiation grants be awarded to tribes/consortia?
1000.64 How does the tribe/consortium, know when and how to apply to OSG for a planning and negotiation grant?
1000.65 What kinds of activities do planning and negotiation grants support?
1000.66 What must be included in the application?
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1000.68 May non-BIA bureaus provide technical assistance to a tribe/consortium in drafting its planning grant application?
1000.69 How can a tribe/consortium obtain comments or selection documents after OSG has made a decision on a planning grant application?
1000.70 What criteria will the Director use to rank the applications and how many maximum points can be awarded for each criterion?
1000.71 Is there an appeal within DOI of a decision by the Director not to award a grant under this subpart?
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1000.79 What is an annual funding agreement (AFA)?

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1000.82 Does a tribe/consortium have the right to include provisions of Title I of Pub. L. 93–638 in an AFA?
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1000.85 How does the AFA specify the services provided, functions performed, and responsibilities assumed by the tribe/consortium and those retained by the Secretary?
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1000.96 Can a tribe/consortium negotiate a tribal share for programs outside its area/agency?
1000.97 May a tribe/consortium obtain funding that is distributed on a discretionary or competitive basis?
1000.98 Are all funds identified as tribal shares always paid to the tribe/consortium under an AFA?
1000.99 How are savings that result from downsizing allocated?
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1000.103 Once a tribe/consortium establishes a base budget, are funding amounts renegotiated each year?
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1000.113 What programs are included under section 403(c)?
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1000.116 Are there any programs that may not be included in an AFA?
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1000.120 What else is on the list in addition to eligible programs?
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1000.129 Instead of the appropriate OIG rate, is it possible to establish a fixed amount or negotiated rate for indirect costs where funds are limited?

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1000.130 May the bureaus negotiate terms to be included in an AFA for non-Indian programs?

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1000.165 How does a newly selected tribe/consortium initiate the negotiation phase?
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1000.169 What is the process for conducting the negotiation phase?
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1000.183 Who may raise the issue of limitation or reduction of services, contracts, or funding?
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1000.202 How does a tribe/consortium obtain a waiver?
1000.203 When can a tribe/consortium request a waiver of a regulation?
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1000.206 On what basis may the Secretary deny a waiver request?
1000.207 What happens if the Secretary denies the waiver request?
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1000.209 May a tribe/consortium propose a substitute for a regulation it wishes to be waived?
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1000.211 How does a tribe/consortium request a reconsideration of the Secretary's denial of a waiver?
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1000.221 Is an agency relationship created by this subpart?
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1000.227 What role does the Indian tribe/consortium have regarding a construction program included in an AFA?
1000.228 What role does the Secretary have regarding a construction program in an AFA?
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1000.241 What principal statutes and regulations apply to FTCA coverage?
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1000.243 Is there a deadline for filing FTCA claims?
1000.244 How long does the federal government have to process a FTCA claim after the claim is received by the federal agency, before a lawsuit may be filed?
1000.245 Is it necessary for a self-governance AFA to include any clauses about FTCA coverage?
1000.246 Does the FTCA apply to a self-governance AFA if the FTCA is not referred to in the AFA?

1000.247 To what extent must the tribe/consortium cooperate with the federal government in connection with tort claims arising out of the tribe/consortium's performance?
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1000.250 Is the FTCA the exclusive remedy for a tort claim arising of the performance of a self-governance AFA?
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1000.254 What should a self-governance tribe/consortium or tribe's/consortium's employee do on receiving a tort claim?
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1000.259 What is the purpose of this subpart?
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1000.262 What is imminent jeopardy to natural resources?
1000.263 What is imminent jeopardy to public health and safety?
1000.264 In an imminent jeopardy situation, what is the Secretary required to do?
1000.265 Must the Secretary always reassume a program, upon a finding of imminent jeopardy?
1000.266 What happens if the Secretary's designated representative determines that the tribe/consortium cannot mitigate the conditions within 60 days?
1000.267 What will the notice of reassumption include?
1000.268 How much time will a tribe/consortium have to respond to a notice of imminent jeopardy?
1000.269 What information must the tribe/consortium's response contain?
1000.270 How will the Secretary reply to the tribe/consortium's response?
1000.271 What happens if the Secretary accepts the tribe/consortium's proposed measures?
1000.272 What happens if the Secretary does not accept the tribe/consortium's proposed measures?
1000.273 What must a tribe/consortium do when a program is reassumed?
1000.274 When must the tribe/consortium return funds to the Department?
1000.275 May the tribe/consortium be reimbursed for actual and reasonable ''wind up costs'' incurred after the effective date of recession?
1000.276 Is a tribe/consortium's general right to negotiate an annual funding agreement adversely affected by a reassumption action?
1000.277 When will the Secretary return management of a reassumed program?

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1000.289 What is the purpose of this subpart?
1000.290 Is a decision by a tribe/consortium not to include a program in a successor agreement considered a retrocession?
1000.291 Who may retrocede a program in an annual funding agreement?
1000.292 How does a tribe/consortium retrocede a program?
1000.293 When will the retrocession become effective?
1000.294 What effect will retrocession have on the tribe/consortium's existing and future annual funding agreements?
1000.295 What obligation does the tribe/consortium have to return funds that were used in the operation of the retroceded program?
1000.296 What obligation does the tribe/consortium have to return property that was used in the operation of the retroceded program?
1000.297 What happens to a tribe/consortium's mature contractor status if it retrocedes a program that is also available for self-determination contracting?
1000.298 How does retrocession effect a bureau's operation of the retroceded program?

Subpart O—Trust Evaluation Review

1000.310 What is the purpose of this subpart?
1000.311 Does the Tribal Self-Governance Act of 1994 alter the trust responsibility of the United States to Indian tribes and individuals under self-governance?
1000.312 What are ''trust resources'' for the purposes of the trust evaluation process?
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1000.314 What is a trust evaluation?
1000.315 How are trust evaluations conducted?
1000.316 May the trust evaluation process be used for additional reviews?
1000.317 Can an initial review of the status of the trust asset be conducted?
1000.318 What are the responsibilities of the Secretary's designated representative(s) after the annual trust evaluation?
1000.319 Is the trust evaluation standard or process different when the trust asset is held in trust for an individual Indian or Indian allottee?
1000.320 Will the annual review include a review of the Secretary's residual trust functions?
1000.321 What are the consequences of a finding of imminent jeopardy in the annual trust evaluation?
1000.322 What if the trust evaluation reveals problems which do not rise to the level of imminent jeopardy?
1000.323 Who is responsible for corrective action?
1000.324 What are the requirements of the review team report?
1000.325 Can the Department conduct more than one trust evaluation per tribe per year?
1000.326 Will the Department evaluate a tribe/consortium's performance of non-trust related programs?

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1000.339 What is the purpose of this subpart?
1000.340 How is information about self-governance developed and reported?
1000.341 What will the tribe/consortium's annual report on self-governance address?

Subpart Q—Miscellaneous Provisions

1000.352 How can a tribe/consortium hire a federal employee to assist with the implementation of an annual funding agreement?
1000.353 Can a tribe/consortium employee be detailed to a federal service position?
1000.354 How does the Freedom of Information Act apply?
1000.355 How does the Privacy Act apply?
1000.356 How will payments be made to self-governance tribes/tribal consortia?
1000.357 What audit requirements must a self-governance tribe/consortium follow?
1000.358 Do OMB circulars and revisions apply to self-governance funding agreements?
1000.359 Does a tribe/consortium have additional ongoing requirements to maintain minimum standards for tribe/consortium management systems?
1000.360 Can a tribe/consortium retain savings from programs?
1000.361 Can a tribe/consortium carry over funds not spent during the term of the AFA?
1000.362 After a non-BIA annual funding agreement has been executed and the funds transferred to a tribe/consortium, can a bureau request the return of funds?
1000.363 How can a person or group appeal a decision or contest an action related to a program operated by a tribe/consortium under an annual funding agreement?
1000.364 Must self-governance tribes/consortia comply with the Secretarial approval requirements of 25 U.S.C. 81 and 476 regarding professional and attorney contracts?
1000.365 Can funds provided under a self-governance annual funding agreement be treated as non-federal funds for the purpose of meeting matching requirements under any federal law?

1000.366 Will Indian preference in employment, contracting, and subcontracting apply to services, activities, programs and functions performed under a self-governance annual funding agreement?
1000.367 Do the wage and labor standards in the Davis-Bacon Act of March 3, 1931 (40 U.S.C., § 276a–276a–f) (46 Stat. 1494), as amended and with respect to construction, alteration and repair, the Act of March 3, 1921, apply to tribes and tribal consortia?

Appendix A—To Part 1000—Model Compact of Self-Governance Between the _____ Tribe and the Department of the Interior

Authority: 25 U.S.C. 458aa–gg

Subpart A—General Provisions

§ 1000.1 Authority.

This part is prepared and issued by the Secretary of the Interior under the negotiated rulemaking procedures in 5 U.S.C. 565.

§ 1000.2 Definitions.

403(c) Program means non-BIA programs eligible under Section 403(c) of the Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. 450 *et seq.* and, specifically, those programs, functions, services, and activities which are of a special geographic, historical or cultural significance to a self-governance Tribe/consortium. These programs may be referred to, also, as ''nexus'' programs.

Act means the Tribal Self-Governance Act of 1994, as amended, which is Title IV of the Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. 93–638), as amended, 25 U.S.C. 450 *et seq.* The Tribal Self-Governance Act of 1994 was originally enacted as Title II of Pub. L. 103–413, 25 U.S.C. 458aa *et seq.*

Applicant Pool means Tribes/Consortia that the Director of the Office of Self-Governance has determined are eligible to participate in self-governance in accordance with § 1000.16 of this part.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BIA Program means any program, service, function, or activity, or portions thereof, that is performed or administered by the Department through the Bureau of Indian Affairs.

Bureau means a bureau or office of the Department of the Interior.

Compact means an executed document which affirms the government-to-government relationship between a self-governance tribe and the United States. The compact differs from an annual funding agreement in that parts of the compact apply to all bureaus within the Department of the Interior rather than a single bureau.

Consortium means an organization of Indian tribes that is authorized by those tribes to participate in self-governance under this part and is responsible for negotiating, executing, and implementing annual funding agreements and compacts. A consortium that has negotiated compacts and annual funding agreements under the Tribal Self-Governance Demonstration Project must be treated in the same manner as a consortium under the permanent Self-Governance Program.

Days means calendar days, except where the last day of any time period specified in this part falls on a Saturday, Sunday, or a federal holiday, the period must carry over to the next business day unless otherwise prohibited by law.

Director means the Director of the Office of Self-Governance (OSG).

DOI or Department means the Department of the Interior.

Funding year means either fiscal or calendar year.

Indian means a person who is a member of an Indian Tribe.

Indian tribe or tribe means any Indian tribe, band, nation or other organized group or community, including pueblos, rancherias, colonies and any Alaskan Native Village, or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

Indirect cost rate means the rate(s) arrived at through negotiation between an Indian tribe/consortium and the appropriate federal agency.

Indirect costs means costs incurred for a common or joint purpose benefiting more than one program which are not readily assignable to individual programs.

Non-BIA bureau means any bureau or office within the Department other than the Bureau of Indian Affairs.

Non-BIA program means those programs administered by bureaus or offices other than the Bureau of Indian Affairs within the Department of the Interior.

Office of Self-Governance (OSG) means the office within the Office of the Assistant Secretary—Indian Affairs responsible for the implementation and development of the Tribal Self-Governance Program.

Program means any program, service, function, or activity, or portions thereof, administered by a bureau within the Department of the Interior.

Pub. L. 93–638 means Sections 1–9 and Title I of the Indian Self-Determination and Education Assistance Act of 1975, as amended.

Reassumption means that the Secretary reassumes control or operation of a program under § 1000.260.

Retained tribal share means those funds which were available as a tribal share but under the annual funding agreement (AFA) were left with the BIA to administer.

Retrocession means the voluntary return by a tribe/consortium to a bureau of a program operated under an AFA before the agreement expires.

Secretary means the Secretary of the Interior (DOI) or his or her designee authorized to act on behalf of the Secretary as to the matter at hand.

Self-governance tribe/consortium means a tribe or consortium that participates in permanent self-governance through application and selection from the applicant pool or has participated in the tribal self-governance demonstration project. May also be referred to as ''participating tribe/consortium''.

Successor AFA means a funding agreement negotiated after a tribe/consortium's initial agreement with a bureau for continuing to perform a particular program. The parties to the AFA should generally use the terms of the existing AFA to expedite and simplify the exchange of information and the negotiation process.

Tribal share means the amount determined for that tribe/consortium from a particular program at the BIA area, agency and central office levels.

§ 1000.3 Purpose and Scope.

(a) *General.* This part codifies uniform and consistent rules for the Department of the Interior (DOI) in implementing Title IV of the Indian Self-Determination and Education Assistance Act (ISDEA) Pub. L. 93–638, 25 U.S.C. 450 *et seq.*, as amended by Title II of Pub. L. 103–413, The Tribal Self-Governance Act of 1994, 25 U.S.C. 458aa *et seq.* (108 Stat. 4250, October 25, 1994).

(b) *Information Collection.* (1) The information provided by the Tribes will be used by the Department of the Interior for a variety of purposes. The first purpose will be to ensure that qualified applicants are admitted into the applicant pool consistent with the requirements of the Act. In addition, tribes seeking grant assistance to meet the planning requirements for admission into the applicant pool, will provide information so that grants can be awarded to tribes meeting basic eligibility (i.e. tribal resolution

indicating that the tribe wants to plan for Self-Governance and have no material audit exceptions for the last three years of audits). There is no confidential information being solicited and confidentiality is not extended under the law. Other documentation is required to meet the reporting requirements as called for in Section 405 of the Act. The information being provided by the Tribes is required to obtain a benefit, however, no person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number.

(2) The Office of Self-Governance has estimated the public reporting and recordkeeping burden for this part, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The following table depicts the burden for each section of 25 CFR part 1000. Send comments regarding this burden estimate or any other aspect of these information collection and recordkeeping requirements, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Office of Self-Governance, Room 2542, 1849 C Street, NW, Washington, DC 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503.

25 CFR section	Number of respondents	Frequency of response	Total annual responses	Burden hours per response	Annual burden hours
1000.17	10	1	10	3	30
1000.18	10	1	10	0.25	2.50
1000.19–21	10	1	10	400	4,000
1000.32	3	1	3	3	9
1000.47	10	1	10	0.50	5
1000.50(a)	10	1	10	3	30
1000.50(b)	10	1	10	0.25	2.50
1000.50(c)	10	1	10	40	400
1000.66	15	1	15	40	600
1000.159, .160	40	1	40	2	80
1000.165, .166	12	1	12	3	36
1000.175	1	1	1	3	3
1000.202	5	1	5	10	50
1000.223	5	4	20	3	60
1000.227	5	1	5	3	15
1000.292	1	1	1	3	3
1000.341	85	1	85	64	5,440
Totals	85		257	3	10,766

§ 1000.4 Policy statement.

(a) *Congressional findings.* In the Tribal Self-Governance Act of 1994, the Congress found that:

(1) The tribal right of self-governance flows from the inherent sovereignty of Indian tribes and nations;

(2) The United States recognizes a special government-to-government relationship with Indian tribes, including the right of the tribes to self-governance, as reflected in the Constitution, treaties, federal statutes, and the course of dealings of the United States with Indian tribes;

(3) Although progress had been made, the federal bureaucracy, with its centralized rules and regulations, had eroded tribal self-governance and dominated tribal affairs;

(4) The Tribal Self-Governance Demonstration Project was designed to improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over federal funding and program management; and

(5) Congress has reviewed the results of the Tribal Self-Governance demonstration project and finds that:

(i) Transferring control over funding and decisionmaking to tribal governments, upon tribal request, for federal programs is an effective way to implement the federal policy of government-to-government relations with Indian tribes; and

(ii) Transferring control over funding and decisionmaking to tribal governments, upon request, for federal programs strengthens the federal policy of Indian self-determination.

(b) *Congressional declaration of policy.* It is the policy of the Tribal Self-Governance Act to permanently establish and implement self-governance:

(1) To enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;

(2) To permit each Indian tribe to choose the extent of its participation in self-governance;

(3) To coexist with the provisions of the Indian Self-Determination and Education Assistance Act relating to the provision of Indian services by designated federal agencies;

(4) To ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;

(5) To permit an orderly transition from federal domination of programs and services to provide Indian tribes with meaningful authority to plan, conduct, redesign, and administer programs, services, functions, and activities that meet the needs of the individual tribal communities; and

(6) To provide for an orderly transition through a planned and measurable parallel reduction in the federal bureaucracy.

(c) *Secretarial self-governance policies.* (1) It is the policy of the Secretary to fully support and implement the foregoing policies to the full extent of the Secretary's authority.

(2) It is the policy of the Secretary to recognize and respect the unique government-to-government relationship between Tribes, as sovereign governments, and the United States.

(3) It is the policy of the Secretary to have all bureaus of the Department work cooperatively and pro-actively with tribes and tribal consortia on a government-to-government basis within the framework of the Act and any other applicable provision of law, so as to make the ideals of self-determination and self-governance a reality.

(4) It is the policy of the Secretary to have all bureaus of the Department actively share information with tribes and tribal consortia to encourage tribes and tribal consortia to become knowledgeable about the Department's programs and the opportunities to include them in an annual funding agreement.

(5) It is the policy of the Secretary that all bureaus of the Department will negotiate in good faith, interpret each applicable federal law and regulation in a manner that will facilitate the inclusion of programs in each annual funding agreement authorized, and enter into such annual funding agreements under Title IV, whenever possible.

(6) It is the policy of the Secretary to afford tribes and tribal consortia the maximum flexibility and discretion necessary to meet the needs of their communities consistent with their diverse demographic, geographic, economic, cultural, health, social, religious, and institutional needs. These policies are designed to facilitate and encourage tribes and tribal consortia to participate in the planning, conduct and administration of those federal programs, included, or eligible for inclusion in an annual funding agreement.

(7) It is the policy of the Secretary, to the extent of the Secretary's authority, to maintain active communication with tribal governments regarding budgetary matters applicable to programs subject to the Act, and which are included in an individual self-governance annual funding agreement.

(8) It is the policy of the Secretary to implement policies, procedures and practices at the Department of the Interior to ensure that the letter, spirit, and goals of the Tribal Self-Governance Act are fully and successfully implemented.

Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

Purpose and Definitions

§ 1000.10 What is the purpose of this subpart?

This subpart describes the selection process and eligibility criteria that the Secretary uses to decide which Indian tribes may participate in tribal self-governance as authorized by section 402 of the Tribal Self-Governance Act of 1994.

§ 1000.11 What is the ''applicant pool''?

The applicant pool is the pool of tribes/consortia that the Director of the Office of Self-Governance has determined are eligible to participate in self-governance.

§ 1000.12 What is a ''signatory''?

A signatory is an Indian tribe or consortium that meets the eligibility criteria in § 1000.15 and directly signs the agreements. A signatory may exercise all of the rights and responsibilities outlined in the compact and annual funding agreement and is legally responsible for all financial and administrative decisions made by the signatory.

§ 1000.13 What is a ''nonsignatory tribe''?

A nonsignatory tribe is an Indian tribe that either:

(a) Does not meet the eligibility criteria in § 1000.15 and, by resolution of its governing body, authorizes a consortium to participate in self-governance on its behalf.

(1) The tribe may not sign the compact and annual funding agreement. A representative of the consortium must sign both documents on behalf of the tribe.

(2) The tribe may only become a ''signatory tribe'' if it independently meets the eligibility criteria in § 1000.15; or

(b) Meets the eligibility criteria in § 1000.15 but chooses to be a member of a consortium and have a representative of the consortium sign the compact and AFA on its behalf.

Eligibility

§ 1000.14 Who is eligible to participate in tribal self-governance?

Two types of entities are eligible to participate in tribal self-governance:

(a) Indian tribes; and

(b) Consortia of Indian tribes.

§ 1000.15 How many additional tribes/consortia may participate in self-governance per year?

(a) Sections 402(b) and (c) of the Act authorize the Director to select up to 50 additional Indian tribes per year from an ''applicant pool.'' A consortium of Indian tribes counts as one tribe for purposes of calculating the 50 additional tribes per year.

(b) Any signatory tribe that signed a compact and AFA under the tribal self-governance demonstration project may negotiate its own compact and AFA in accordance with this subpart without being counted against the 50-tribe limitation in any given year.

§ 1000.16 What criteria must a tribe/consortium satisfy to be eligible for admission to the ''applicant pool''?

To be admitted into the applicant pool, a tribe/consortium must either be an Indian tribe or a consortium of Indian tribes and comply with § 1000.17.

§ 1000.17 What documents must a tribe/consortium submit to OSG to apply for admission to the applicant pool?

The tribe/consortium must submit to OSG documentation that shows all of the following.

(a) *Successful completion of a planning phase and a planning report.* The requirements for both of these are described in §§ 1000.19 and 1000.20. A consortium's planning activities satisfy this requirement for all its member tribes for the purpose of the consortium meeting this requirement.

(b) *A request for participation in self-governance by a tribal resolution and/or a final official action by the tribal governing body.* For a consortium, the governing body of each tribe must authorize its participation by a tribal resolution and/or a final official action by the tribal governing body that specifies the scope of the consortium's authority to act on behalf of the tribe.

(c) *A demonstration, of financial stability and financial management capability for the previous 3 fiscal years.* This will be done by providing as part of the application an audit report as prescribed by the Single Audit Act of 1984, 31 U.S.C. Section 7501, *et seq.* for the previous 3 years of the self-determination contracts. These audits must not contain material audit exceptions as defined in § 1000.21.

§ 1000.18 May a consortium member tribe withdraw from the consortium and become a member of the applicant pool?

In accordance with the expressed terms of the compact or written agreement of the consortium, a consortium member tribe (either a signatory or nonsignatory tribe) may withdraw from the consortium to directly negotiate a compact and AFA. The withdrawing tribe must do the following:

(a) Independently meet all of the eligibility criteria in §§ 1000.13–1000.20. If a consortium's planning activities and report specifically consider self-governance activities for a member tribe, those planning activities and report may be used to satisfy the planning requirements for the member tribe if it applies for self-governance status on its own.

(b) Submit a notice of withdrawal to OSG and the consortium as evidenced by a resolution of the tribal governing body.

§ 1000.19 What is done during the ''planning phase''?

The Act requires that all tribes/consortia seeking to participate in tribal

self-governance complete a planning phase. During the planning phase, the tribe/consortium must conduct legal and budgetary research and internal tribal government and organizational planning. The availability of BIA grant funds for planning activities will be in accordance with subpart C of this part. The planning phase may be completed without a planning grant.

§ 1000.20 What is contained in a planning report?

As evidence that the tribe/consortium has completed the planning phase, the tribe/consortium must prepare and submit to the Secretary a final planning report.

(a) The planning report must:

(1) Identify the BIA and non-BIA programs that the tribe/consortium may wish to subsequently negotiate for inclusion in a compact and AFA;

(2) Identify the tribe/consortium's planning activities for both BIA and non-BIA programs that may be negotiated;

(3) Identify the major benefits derived from the planning activities;

(4) Identify the process that the tribe/consortium will use to resolve any complaints by service recipients;

(5) Identify any organizational planning that the tribe/consortium has completed in anticipation of implementating tribal self-governance; and

(6) Indicate if the tribe's/consortium's planning efforts have revealed that its current organization is adequate to assume programs under tribal self-governance.

(b) In supplying the information required by paragraph (a)(5) of this section:

(1) For BIA programs, a tribe/consortium may wish to describe the process that it will use to debate and decide the setting of priorities for the funds it will receive from its annual funding agreement.

(2) For non-BIA programs that the tribe/consortium may wish to negotiate, the report should describe how the tribe/consortium proposes to perform the programs.

§ 1000.21 When does a tribe/consortium have a "material audit exception"?

(a) A tribe/consortium has a material audit exception if any of the audits that it submitted under § 1000.17(c):

(1) Identifies a material weakness, or a finding of substantial financial mismanagement or misapplication of funds, that has not been resolved; or

(2) Has any questioned costs subsequently disallowed by a contracting officer which total 5 percent or more of the total expenditures identified in the audit.

(b) If the audits submitted under § 1000.17(c) identify material weaknesses or contain questioned costs, the tribe/consortium must also submit copies of the contracting officer's findings and determinations.

§ 1000.22 What are the consequences of having a material audit exception?

If a tribe/consortium has a material audit exception, the tribe/consortium is ineligible to participate in self-governance until the tribe/consortium meets the eligibility criteria in § 1000.16.

Admission Into the Applicant Pool

§ 1000.23 How is a tribe/consortium admitted to the applicant pool?

To be considered for admission in the applicant pool, a tribe/consortium must submit an application to the Director, Office of Self-Governance, 1849 C Street NW.; MS 2548–MIB; Department of the Interior; Washington, DC 20240. The application must contain the documentation required in § 1000.17.

§ 1000.24 When does OSG accept applications to become a member of the applicant pool?

OSG accepts applications to become a member of the applicant pool at any time.

§ 1000.25 What are the deadlines for a tribe/consortium in the applicant pool to negotiate a compact and annual funding agreement?

(a) To be considered for negotiations in any year, a tribe/consortium must be a member of the applicant pool on March 1 of the year in which the negotiations are to take place.

(b) An applicant may be admitted into the applicant pool during one year and selected to negotiate a compact and annual funding agreement in a subsequent year. In this case, the applicant must, before March 1 of the negotiation year, submit to OSG updated documentation that permits OSG to evaluate whether the tribe/consortium still satisfies the application criteria in § 1000.17.

§ 1000.26 Under what circumstances will a tribe/consortium be removed from the applicant pool?

Once admitted into the applicant pool, a tribe/consortium will only be removed if it:

(a) Fails to satisfy the audit criteria in § 1000.17(c); or

(b) Submits to OSG a tribal resolution and/or official action by the tribal governing body requesting removal.

§ 1000.27 How does the Director select which tribes in the applicant pool become self-governance tribes?

The Director selects up to the first 50 tribes from the applicant pool in any given year ranked according to the earliest postmark date of complete applications. If multiple complete applications have the same postmark date and there are insufficient slots available for that year, the Director will determine priority through random selection. A representative of each tribe/consortium that has submitted an application subject to random selection may, at the option of the tribe/consortium, be present when the selection is made.

§ 1000.28 What happens if an application is not complete?

(a) If OSG determines that a tribe's/consortium's application is deficient, OSG will immediately notify the tribe/consortium of the deficiency by letter, certified mail, return receipt requested. The letter will explain what the tribe/consortium must do to correct the deficiency.

(b) The tribe/consortium will have 20 working days from the date of receiving the letter to mail or telefax the corrected material and retain the applicant's original postmark.

(c) If the corrected material is deficient, the date of entry into the applicant pool will be the date the complete application is postmarked.

(d) If the postmark or date on the applicant's response letter or telefax is more than 20 working days after the date the applicant received the notice of deficiency letter, the date of entry into the applicant pool will be the date of full receipt of a completed application.

§ 1000.29 What happens if a tribe/consortium is selected from the applicant pool but does not execute a compact and an annual funding agreement during the calendar year?

(a) The tribe/consortium remains eligible to negotiate a compact and annual funding agreement at any time unless:

(1) It notifies the Director in writing that it no longer wishes to be eligible to participate in the Tribal Self-Governance Program;

(2) Fails to satisfy the audit requirements of § 1000.17(c); or

(3) Submits documentation evidencing a tribal resolution requesting removal from the application pool.

(b) The failure of the tribe/consortium to execute an agreement has no effect on the selection of up to 50 additional tribes/consortia in a subsequent year.

§ 1000.30 May a tribe/consortium be selected to negotiate an annual funding agreement pursuant to section 403(b)(2) without having or negotiating an annual funding agreement pursuant to section 403(b)(1)?

Yes. A tribe/consortium may be selected to negotiate an AFA pursuant to section 403(b) without having or negotiating an AFA pursuant to section 403(b)(1).

§ 1000.31 May a tribe/consortium be selected to negotiate an annual funding agreement pursuant to section 403(c) without negotiating an annual funding agreement under section 403(b)(1) and/or section 403(b)(2)?

No. Section 403(c) of the Act states that any programs of special geographic, cultural, or historical significance to the tribe/consortium must be included in AFAs negotiated pursuant to section 403(a) and/or section 403(b). A tribe may be selected to negotiate an annual funding agreement pursuant to section 403(c) at the same time that it negotiates an AFA pursuant to section 403(b)(1) and/or section 403(b)(2).

Withdrawal From a Consortium Annual Funding Agreement

§ 1000.32 What happens when a tribe wishes to withdraw from a consortium annual funding agreement?

(a) A tribe wishing to withdraw from a consortium's AFA must notify the consortium, bureau, and OSG of the intent to withdraw. The notice must be:

(1) In the form of a tribal resolution or other official action by the tribal governing body; and

(2) Received no later than 180 days before the effective date of the next AFA.

(b) The resolution referred to in paragraph (a)(1) of this section must indicate whether the tribe wishes the withdrawn programs to be administered under a Title IV AFA, Title I contract, or directly by the bureau.

(c) The effective date of the withdrawal will be the date on which the current agreement expires, unless the consortium, the tribe, OSG, and the appropriate bureau agree otherwise.

§ 1000.33 What amount of funding is to be removed from the consortium's AFA for the withdrawing tribe?

The consortium's AFA must be reduced by the portion of funds attributable to the withdrawing tribe, on the same basis or methodology upon which the funds were included in the consortium's AFA.

(a) If there is not a clear identifiable methodology upon which to base the reduction for a particular program, the consortium, tribe, OSG, and bureau must negotiate an appropriate amount on a case-by-case basis.

(b) If a tribe withdraws in the middle of a year, the consortium agreement must be amended to reflect:

(1) A reduction based on the amount of funds passed directly to the tribe, or already spent or obligated by the consortium on behalf of the tribe; and

(2) That the consortium is no longer providing those programs associated with the withdrawn funds.

(c) Carryover funds from a previous fiscal year may be factored into the amount by which the consortium agreement is reduced if:

(1) The consortium, tribe, OSG, and bureau agree it is appropriate; and

(2) The funds are clearly identifiable.

§ 1000.34 What happens if there is a dispute between the consortium and the withdrawing tribe?

(a) At least 15 days before the 90-day Congressional review period of the next AFA, the consortium, OSG, bureau, and the withdrawing tribe must reach an agreement on the amount of funding and other issues associated with the program or programs involved.

(b) If agreement is not reached:

(1) For BIA programs, within 10 days the Director must make a decision on the funding or other issues involved.

(2) For non-BIA programs, the bureau head will make a decision on the funding or other issues involved.

(c) A copy of the decision made under paragraph (b) of this section must be distributed in accordance with the following table.

If the program is . . .	Then a copy of the decision must be sent to . . .
A BIA program	The BIA Area director, the Deputy Commissioner of Indian Affairs, the withdrawing tribe, and the consortium.
A non-BIA program	The non-BIA bureau official, the withdrawing tribe, and the consortium.

(d) Any decision made under paragraph (b) of this section is appealable under subpart R of this part.

Subpart C—Section 402(d) Planning and Negotiation Grants Purpose and Types of Grants

Purpose and Types of Grants

1000.40 What is the purpose of this subpart?

This subpart describes the availability and process of applying for planning and negotiation grants authorized by section 402(d) of the Act to help tribes meet costs incurred in:

(a) Meeting the planning phase requirement of the Act, including planning to negotiate for non-BIA programs; and

(b) Conducting negotiations.

§ 1000.41 What types of grants are available?

Three categories of grants may be available:

(a) Negotiation grants may be awarded to the tribes/consortia that have been selected from the applicant pool as described in subpart B of this part;

(b) Planning grants may be available to tribes/consortia requiring advance funding to meet the planning phase requirement of the Act; and

(c) Financial assistance may be available to tribes/consortia to plan for negotiating for non-BIA programs, as described in subpart F of this part.

Availability, Amount, and Number of Grants

§ 1000.42 Will grants always be made available to meet the planning phase requirement as described in section 402(d) of the Act?

No. Grants to cover some or all of the planning costs that a tribe/consortium may incur, depend upon the availability of funds appropriated by Congress. Notice of availability of grants will be published in the **Federal Register** as described in § 1000.45.

§ 1000.43 May a tribe/consortium use its own resources to meet its self-governance planning and negotiation expenses?

Yes. A tribe/consortium may use its own resources to meet these costs. Receiving a grant is not necessary to meet the planning phase requirement of the Act or to negotiate a compact and an AFA.

§ 1000.44 What happens if there are insufficient funds to meet the tribal requests for planning/negotiation grants in any given year?

If appropriated funds are available but insufficient to meet the total requests from tribes/consortia:

(a) First priority will be given to tribes/consortia that have been selected

from the applicant pool to negotiate an AFA; and

(b) Second priority will be given to tribes/consortia that require advance funds to meet the planning requirement for entry into the self-governance program.

§ 1000.45 How many grants will the Department make each year and what funding will be available?

The number and size of grants awarded each year will depend on Congressional appropriations and tribal interest. By no later than January 1 of each year, the Director will publish a notice in the **Federal Register** which provides relevant details about the application process, including the funds available, timeframes, and requirements for negotiation grants, advance planning grants, and financial assistance as described in subpart D of this part.

Selection Criteria

§ 1000.46 Which tribes/consortia may be selected to receive a negotiation grant?

Any tribe/consortium that has been accepted into the applicant pool and has been accepted to negotiate a self-governance AFA may apply for a negotiation grant. By March 15 of each year, the Director will publish a list of additional tribes/consortia that have been selected for negotiation along with information on how to apply for negotiation grants.

§ 1000.47 What must a tribe/consortium do to receive a negotiation grant?

If funds are available, a grant will be awarded to help cover the costs of preparing for and negotiating a compact and an AFA. These grants are not competitive. To receive a negotiation grant, a tribe/consortium must:

(a) Be selected from the applicant pool to negotiate an AFA;

(b) Be identified as eligible to receive a negotiation grant in the **Federal Register** notice discussed in § 1000.45;

(c) Not have received a negotiation grant within the 3 years preceding the date of the latest **Federal Register** announcement;

(d) Submit a letter affirming its readiness to negotiate; and

(e) Formally request a negotiation grant to prepare for and negotiate an AFA.

§ 1000.48 What must a tribe do if it does not wish to receive a negotiation grant?

A selected tribe/consortium may elect to negotiate without applying for a negotiation grant. In such a case, the tribe/consortium should notify OSG in writing so that funds can be reallocated for other grants.

Advance Planning Grant Funding

§ 1000.49 Who can apply for an advance planning grant?

Any tribe/consortium that is not a self-governance tribe and needs advance funding to complete the planning phase requirement may apply. Tribes/consortia that have received a planning grant within 3 years preceding the date of the latest **Federal Register** announcement are not eligible.

§ 1000.50 What must a tribe/consortium seeking a planning grant submit in order to meet the planning phase requirements?

A tribe/consortium must submit the following material:

(a) A tribal resolution or other final action of the tribal governing body indicating a desire to plan for tribal self-governance.

(b) Audits from the last 3 years which document that the tribe/consortium is free from material audit exceptions. In order to meet this requirement, a tribe/consortium may use the audit currently being conducted on its operations if this audit is submitted before the tribe/consortium completes the planning activity.

(c) A proposal that includes:

(1) The tribe/consortium's plans for conducting legal and budgetary research;

(2) The tribe/consortium's plans for conducting internal tribal government and organizational planning;

(3) A timeline indicating when planning will start and end, and;

(4) Evidence that the tribe/consortium can perform the tasks associated with its proposal (i.e., resumes and position descriptions of key staff or consultants to be used).

§ 1000.51 How will tribes/consortia know when and how to apply for planning grants?

The number and size of grants awarded each year will depend on Congressional appropriations. By no later than January 1 of each year, the Director will publish in the **Federal Register** a notice concerning the availability of planning grants for additional tribes. This notice must identify the specific details for applying.

§ 1000.52 What criteria will the Director use to award advance planning grants?

Advance planning grants are discretionary and based on need. The Director will use the following criteria to determine whether or not to award a planning grant to a tribe/consortium before the tribe/consortium is selected into the applicant pool.

(a) Completeness of application as described in §§ 1000.50 and 1000.51.

(b) Financial need. The Director will rank applications according to the percent of tribal resources that comprise total resources covered by the latest A–128 audit. Priority will be given to applications that have a lower level of tribal resources as a percent of total resources.

(c) Other factors that the tribe may identify as documenting its previous efforts to participate in self-governance and demonstrating its readiness to enter into a self-governance agreement.

§ 1000.53 Can tribes/consortia that receive advance planning grants also apply for a negotiation grant?

Yes. Tribes/consortia that successfully complete the planning activity and are selected may apply to be included in the applicant pool. Once approved for inclusion in the applicant pool, the tribe/consortium may apply for a negotiation grant according to the process in §§ 1000.46–1000.48.

§ 1000.54 How will a tribe/consortium know whether or not it has been selected to receive an advance planning grant?

No later than June 1, the Director will notify the tribe/consortium by letter whether it has been selected to receive an advance planning grant.

§ 1000.55 Can a tribe/consortium appeal within DOI the Director's decision not to award a grant under this subpart?

No. The Director's decision to award or not to award a grant under this subpart is final for the Department.

Subpart D—Other Financial Assistance for Planning and Negotiation Grants for Non-BIA Programs

Purpose and Eligibility

§ 1000.60 What is the purpose of this subpart?

This subpart describes the availability and process of applying for other financial assistance that may be available for planning and negotiating for a non-BIA program.

§ 1000.61 Are other funds available to self-governance tribes/consortia for planning and negotiating with non-BIA bureaus?

Yes. Tribes/consortia may contact the OSG to determine if the OSG has funds available for the purpose of planning and negotiating with non-BIA bureaus under this subpart. A tribe/consortium may also ask a non-BIA bureau for information on any funds which may be available from that bureau in accordance with § 1000.160(g).

Eligibility and Application Process

§ 1000.62 Who can apply to OSG for grants to plan and negotiate non-BIA programs?

Any tribe/consortium that is in the applicant pool, or has been selected from the applicant pool or that has an existing AFA.

§ 1000.63 Under what circumstances may planning and negotiation grants be awarded to tribes/consortia?

At the discretion of the Director, grants may be awarded when requested by the tribe. Tribes/consortia may submit only one application per year for a grant under this section.

§ 1000.64 How does the tribe/consortium know when and how to apply to OSG for a planning and negotiation grant?

When funds are available, the Director will publish a notice in the **Federal Register** announcing their availability and a deadline for submitting an application.

§ 1000.65 What kinds of activities do planning and negotiation grants support?

The planning and negotiation grants support activities such as, but not limited to, the following:

(a) Information gathering and analysis;

(b) Planning activities, which may include notification and consultation with the appropriate non-BIA bureau and identification and/or analysis of activities, resources, and capabilities that may be needed for the tribe/consortium to assume non-BIA programs; and

(c) Negotiation activities.

§ 1000.66 What must be included in the application?

(a) Written notification by the governing body or its authorized representative of the tribe/consortium's intent to engage in planning/negotiation activities like those described in § 1000.65;

(b) Written description of the planning and/or negotiation activities that the tribe/consortium intends to undertake, including, if appropriate, documentation of the relationship between the proposed activities and the tribe/consortium;

(c) The proposed timeline for completion of the planning and/or negotiation activities to be undertaken; and

(d) The amount requested from the OSG.

§ 1000.67 How will the Director award planning and negotiation grants?

The Director must review all grant applications received by the date specified in the announcement to determine whether or not the applications include the required elements outlined in the announcement. The OSG must rank the complete applications submitted by the deadline using the criteria in § 1000.70.

§ 1000.68 May non-BIA bureaus provide technical assistance to a tribe/consortium in drafting its planning grant application?

Yes. Upon request from the tribe/consortium, a non-BIA bureau may provide technical assistance to the tribe/consortium in the drafting of its planning grant application.

§ 1000.69 How can a tribe/consortium obtain comments or selection documents after OSG has made a decision on a planning grant application?

A tribe/consortium may request comments or selection documents under the Freedom of Information Act.

§ 1000.70 What criteria will the Director use to rank the applications and how many maximum points can be awarded for each criterion?

The Director will use the following criteria and point system to rank the applications:

(a) The application contains a clear statement of objectives and timelines to complete the proposed planning or negotiation activity and demonstrates that the objectives are legally authorized and achievable. (20 points)

(b) The proposed budget expenses are reasonable. (10 points)

(c) The proposed project demonstrates a new or unique approach to tribal self-governance or broadens self-governance to include new activities within the Department. (5 points)

§ 1000.71 Is there an appeal within DOI of a decision by the Director not to award a grant under this subpart?

No. All decisions made by the Director to award or not to award a grant under this subpart are final for the Department of the Interior.

§ 1000.72 Will the OSG notify tribes/consortia and affected non-BIA bureaus of the results of the selection process?

Yes. The OSG will notify all applicant tribes/consortia and affected non-BIA bureaus in writing as soon as possible after completing the selection process.

§ 1000.73 Once a tribe/consortium has been awarded a grant, may the tribe/consortium obtain information from a non-BIA bureau?

Yes. See §§ 1000.159–162.

Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs

§ 1000.78 What is the purpose of this subpart?

This subpart describes the components of annual funding agreements for Bureau of Indian Affairs (BIA) programs.

§ 1000.79 What is an annual funding agreement (AFA)?

Annual funding agreements are legally binding and mutually enforceable written agreements negotiated and entered into annually between a Self-Governance tribe/consortium and the Bureau of Indian Affairs.

Contents and Scope of Annual Funding Agreements

§ 1000.80 What types of provisions must be included in a BIA AFA?

Each AFA must specify the programs and it must also specify the applicable funding:

(a) Retained by BIA for ''inherently federal functions'' identified as ''residuals.'' (See § 1000.91.)

(b) Transferred or to be transferred to the tribe/consortium. (See § § 1000.94–1000.97.)

(c) Retained by the BIA to carry out functions that the tribe/consortium could have assumed but elected to leave with BIA. (See § 1000.98.)

§ 1000.81 Can additional provisions be included in an AFA?

Yes. Any provision that the parties mutually agreed upon may be included in an AFA.

§ 1000.82 Does a tribe/consortium have the right to include provisions of Title I of Pub. L. 93–638 in an AFA?

Yes. Under Pub. L. 104–109, a tribe/consortium has the right to include any provision of Title I of Pub. L. 93–638 in an AFA.

§ 1000.83 Can a tribe/consortium negotiate an AFA with a term that exceeds one year?

Yes. At the option of the tribe/consortium, and subject to the availability of Congressional appropriations, a tribe/consortium may negotiate an AFA with a term that exceeds one year in accordance with section 105(c)(1) of Title I of Pub. L. 93–638.

Determining What Programs May Be Included in an AFA

§ 1000.84 What types of programs may be included in an AFA?

A tribe/consortium may include in its AFA programs administered by BIA,

without regard to the BIA agency or office which administers the program, including any program identified in section 403(b)(1) of the Act.

§ 1000.85 How does the AFA specify the services provided, functions performed, and responsibilities assumed by the tribe/consortium and those retained by the Secretary?

(a) The AFA must specify in writing the services, functions, and responsibilities to be assumed by the tribe/consortium and the functions, services, and responsibilities to be retained by the Secretary.

(b) Any division of responsibilities between the tribe/consortium and BIA should be clearly stated in writing as part of the AFA. Similarly, when there is a relationship between the program and BIA's residual responsibility, the relationship should be in writing.

§ 1000.86 Do tribes/consortia need Secretarial approval to redesign BIA programs that the tribe/consortium administers under an AFA?

No.

(a) The Secretary does not have to approve a redesign of a program under the AFA, except when the redesign involves a waiver of a regulation. In such cases, the Secretary must approve, in accordance with subpart J of this part, the waiver before redesign takes place.

(b) This section does not authorize redesign of programs where other prohibitions exist. Redesign shall not result in the tribe/consortium being entitled to receive more or less funding for the program from the BIA.

(c) Redesign of construction project(s) included in an AFA must be done in accordance with subpart K of this part.

§ 1000.87 Can the terms and conditions in an AFA be amended during the year it is in effect?

Yes, terms and conditions in an AFA may be amended during the year it is in effect as agreed to by both the tribe/consortium and the Secretary.

Determining AFA Amounts

§ 1000.88 What funds must be transferred to a tribe/consortium under an AFA?

(a) At the option of the tribe/consortium, the Secretary must provide funds to the tribe/consortium through an AFA for programs, including:

(1) An amount equal to the amount that the tribe/consortium would have been eligible to receive under contracts and grants for direct programs and contract support under Title I of Pub. L. 93–638, as amended;

(2) Any funds that are specifically or functionally related to providing services and benefits to the tribe/consortium or its members by the Secretary without regard to the organizational level within the BIA where such functions are carried out; and

(3) Any funds otherwise available to Indian tribes or Indians for which appropriations are made to agencies other than the Department of the Interior;

(b) Examples of the funds referred to in paragraphs (a)(1) and (a)(2) of this section are:

(1) A tribe/consortium's Pub. L. 93–638 contract amounts;

(2) Negotiated amounts of Agency, Area, and Central Office funds, including previously undistributed funds or new programs on the same basis as they are made available to other tribes;

(3) Other recurring funding;

(4) Non-recurring funding;

(5) Special projects, if applicable;

(6) Construction;

(7) Wildland Firefighting accounts;

(8) Competitive grants; and

(9) Congressional earmarked funding.

(c) An example of the funds referred to in paragraph (a)(3) of this section is Federal Highway Administration funds.

§ 1000.89 What funds may not be included in an AFA?

Funds prohibited from inclusion under section 403(b)(4) of the Act may not be included in an AFA.

§ 1000.90 May the Secretary place any requirements on programs and funds that are otherwise available to tribes/consortia or Indians for which appropriations are made to agencies other than DOI?

No. Unless the Secretary is required to develop terms and conditions which are required by law or which are required by the agency to which the appropriation is made.

§ 1000.91 What are BIA residual funds?

BIA residual funds are the funds necessary to carry out the inherently federal functions that must be performed by federal officials if all tribes assume responsibilities for all BIA programs.

§ 1000.92 How is BIA's residual determined?

(a) Generally, residual levels will be determined through a process that is consistent with the overall process used by the BIA. For purposes of negotiation, by March 1 or within 30 days following release of the President's budget, whichever is later, the Department must publish a notice in the **Federal Register** notifying tribes/consortia of the availability of a list which identifies:

(1) Those functions it believes are residual, in accordance with the definition in § 1000.91;

(2) The legal authority for its determination;

(3) The estimated funding level; and

(4) The organizational level within the BIA where the programs are being performed.

(b) There must be functional consistency throughout BIA in the determination of residuals. The determination must be based upon the functions actually being performed by BIA at the respective office.

(c) The list of residual functions may be amended annually if programs are added or deleted or if statutory or final judicial determinations mandate.

(d) If the BIA and a participating tribe/consortium disagree over the content of the list of residual functions or amounts, a participating tribe/consortium may request the Deputy Commissioner-Indian Affairs to reconsider residual levels for particular programs.

(1) The Deputy Commissioner must make a written determination on the request within 30 days of receiving it.

(2) The tribe/consortium may appeal the Deputy Commissioner's determination to the Assistant Secretary—Indian Affairs.

(3) The decision by the Assistant Secretary—Indian Affairs is final for the Department.

§ 1000.93 May a tribe/consortium continue to negotiate an AFA pending an appeal of the residual list?

Yes. Pending appeal of an item on the annual list of residual activities, any tribe/consortium may continue to negotiate an AFA using the Assistant Secretary's list of residual activities. This list will be subject to later adjustment based on the final determination of a tribe/consortium's appeal.

§ 1000.94 What is a tribal share?

A tribal share is the amount determined for that tribe/consortium for a particular program at the BIA area, agency, and central office levels.

§ 1000.95 How is a tribe/consortium's share of funds to be included in an AFA determined?

There are typically two methods for determining the amount of funds to be included in the AFA:

(a) *Formula-driven.* For formula-driven programs, a tribe/consortium's amount is determined by first identifying the residual funds to be retained by the BIA to perform its inherently federal functions and second, by applying the distribution formula to

the remaining eligible funding for each program involved.

(1) Distribution formulas must be reasonably related to the function or service performed by an office, and must be consistently applied to all tribes within each area and agency office.

(2) The process in paragraph (a) of this section for calculating a tribe's funding under self-governance must be consistent with the process used for calculating funds available to non-self-governance tribes.

(b) *Tribal-specific.* For programs whose funds are not distributed on a formula basis as described in paragraph (a) of this section, a tribe's funding amount will be determined on a tribe-by-tribe basis and may differ between tribes. Examples of these funds may include special project funding, awarded competitive grants, earmarked funding, and construction or other one-time or non-recurring funding for which a tribe is eligible.

§ 1000.96 Can a tribe/consortium negotiate a tribal share for programs outside its area/agency?

Yes. Where BIA services for a particular tribe/consortium are provided from a location outside its immediate agency or area, the tribe may negotiate its share from the BIA location where the service is actually provided.

§ 1000.97 May a tribe/consortium obtain funding that is distributed on a discretionary or competitive basis?

Yes. Unless otherwise provided for in this part, funds provided for Indian services/programs which have not been mandated by Congress to be distributed to a competitive/discretionary basis may be distributed by a tribe/consortium under a formula-driven method. In order to receive such funds, a tribe/consortium must be eligible and qualify. A tribe/consortium that receives such funds under a formula-driven methodology would no longer be eligible to compete for these funds.

§ 1000.98 Are all funds identified as tribal shares always paid to the tribe/consortium under an AFA?

No. At the discretion of the tribe/consortium, tribal shares may be left, in whole or in part, with the BIA for certain programs. This is referred to as a ''retained tribal share.'' (See § 1000.80.)

§ 1000.99 How are savings that result from downsizing allocated?

Funds that are saved as a result of downsizing in the BIA are allocated to tribes/consortia in the same manner as tribal shares as provided for in § 1000.95.

§ 1000.100 Do tribes/consortia need Secretarial approval to reallocate funds between programs that the tribe/consortium administers under the AFA?

No. Unless otherwise required by law, the Secretary does not have to approve the reallocation of funds between programs.

§ 1000.101 Can funding amounts negotiated in an AFA be adjusted during the year it is in effect?

Yes, funding amounts negotiated in an AFA may be adjusted under the following circumstances:

(a) *Congressional action.* (1) Increases/decreases as a result of Congressional appropriations and/or a directive in the statement of managers accompanying a conference report on an appropriations bill or continuing resolution.

(2) General decreases due to Congressional action must be applied consistently to the BIA, self-governance tribes/consortia, and tribes/consortia not participating in self-governance.

(3) General increases due to Congressional appropriations must be applied consistently, except where used to achieve equitable distribution between areas.

(4) A tribe/consortium will be notified of any decrease and be provided an opportunity to reconcile.

(b) *Mistakes.* If the tribe/consortium or the Secretary can identify and document substantive errors in calculations, the parties will renegotiate the amounts and make every effort to correct such errors.

(c) *Mutual Agreement.* Both the tribe/consortium and the Secretary may agree to renegotiate amounts at any time.

Establishing Self-Governance Base Budgets

§ 1000.102 What are self-governance base budgets?

(a) A tribe/consortium self-governance base budget is the amount of recurring funding identified in the President's annual budget request to Congress. This amount must be adjusted to reflect subsequent Congressional action. It includes amounts which are eligible to be base transferred or have been base transferred from BIA budget accounts to self-governance budget accounts. As allowed by Congress, self-governance base budgets are derived from:

(1) A tribe/consortium's Pub. L. 93–638 contract amounts;

(2) Negotiated agency, area, and central office amounts;

(3) Other recurring funding;

(4) Special projects, if applicable;

(5) Programmatic shortfall;

(6) Tribal priority allocation increases and decreases (including contract support funding);

(7) Pay costs and retirement cost adjustments; and

(8) Any other inflationary cost adjustments.

(b) Self-governance base budgets must not include any non-recurring program funds, construction and wildland firefighting accounts, Congressional earmarks, or other funds specifically excluded by Congress. These funds are negotiated annually and may be included in the AFA but must not be included in the self-governance base budget.

§ 1000.103 Once a tribe/consortium establishes a base budget, are funding amounts renegotiated each year?

No. Unless the tribe/consortium desires to renegotiate these amounts. If the tribe/consortium renegotiates funding levels, it must negotiate all funding levels in the AFA using the process for determining residuals and funding amounts on the same basis as other tribes. Self-governance tribes/consortia will be eligible for funding amounts of new programs or available programs not previously included in the AFA on the same basis as other tribes.

§ 1000.104 Must a tribe/consortium with a base budget or base budget-eligible program amounts negotiated before the implementation of this part negotiate new tribal shares and residual amounts?

No.

(a) At tribal option, a tribe/consortium may retain funding amounts that:

(1) Were either base eligible or in the tribe's base; and

(2) Were negotiated before this part is promulgated.

(b) If a tribe/consortium desires to renegotiate the amounts referred to in paragraph (a) of this section, the tribe/consortium must negotiate all funding included in the AFA utilizing the process for determining residuals and funding amounts on the same basis as other tribes.

(c) Self-governance tribes/consortia are eligible for funding amounts for new or available programs not previously included in the AFA on the same basis as other tribes/consortia.

§ 1000.105 How are self-governance base budgets established?

At the request of the tribe/consortium, a self-governance base budget identifying each tribe's funding amount is included in the BIA's budget justification for the following year, subject to Congressional appropriation.

§ 1000.106 How are self-governance base budgets adjusted?

Self-governance base budgets must be adjusted as follows:

(a) *Congressional action.* (1) Increases/decreases as a result of Congressional appropriations and/or a directive in the statement of managers accompanying a conference report on an appropriations bill or continuing resolution.

(2) General decreases due to Congressional action must be applied consistently to the BIA, self-governance tribes/consortia, and tribes/consortia not participating in self-governance.

(3) General increases due to Congressional appropriations must be applied consistently, except where used to achieve equitable distribution between areas.

(4) A tribe/consortium will be notified of any decrease and be provided an opportunity to reconcile.

(b) *Mistakes.* If the tribe/consortium or the Secretary can identify and document substantive errors in calculations, the parties will renegotiate such amounts and make every effort to correct such errors.

(c) *Mutual agreement.* Both the tribe/consortium and the Secretary may agree to renegotiate amounts at any time.

Subpart F—Non-BIA Annual Self-Governance Compacts and Funding Agreements

Purpose

§ 1000.110 What is the purpose of this subpart?

This subpart describes program eligibility, funding, terms, and conditions of AFAs for non-BIA programs.

§ 1000.111 What is an annual funding agreement for a non-BIA program?

Annual funding agreements for non-BIA programs are legally binding and mutually enforceable agreements between a bureau and a tribe/consortium participating in the self-governance program that contain a description of that portion or portions of a bureau program that are to be performed by the tribe/consortium and associated funding, terms, and conditions under which the tribe/consortium will assume a program, or portion thereof.

Eligibility

§ 1000.112 What non-BIA programs are eligible for inclusion in an annual funding agreement?

Programs authorized by sections 403(b)(2) and section 403(c) of the Act are eligible for inclusion in AFAs. The Secretary will annually publish a list of these programs in accordance with section 405(c)(4).

§ 1000.113 What programs are included under section 403(c)?

Department of the Interior programs of special geographic, historical, or cultural significance to participating tribes, individually or as members of a consortium, are eligible for inclusion in AFAs under section 403(c).

§ 1000.114 What does ''special geographic, historical or cultural'' mean?

(a) *Geographic* generally refers to all lands presently ''on or near'' an Indian reservation, and all other lands within ''Indian country'', as defined by 18 U.S.C. 1151. In addition, *geographic* includes:

(1) Lands of former reservations;

(2) Lands conveyed or to be conveyed under the Alaska Native Claims Settlement Act (ANCSA);

(3) Judicially established aboriginal lands of a tribe or a consortium member or as verified by the Secretary; and

(4) Lands and waters and pertaining to Indian rights in natural resources, hunting, fishing, gathering, and subsistence activities, provided or protected by treaty or other applicable law.

(b) *Historical* generally refers to programs or lands having a particular history that is relevant to the tribe. For example, particular trails, forts, significant sites, or educational activities that relate to the history of a particular tribe.

(c) *Cultural* refers to programs, sites, or activities as defined by individual tribal traditions and may include, for example:

(1) Sacred and medicinal sites;

(2) Gathering medicines or materials such as grasses for basket weaving; or

(3) Other traditional activities, including, but not limited to, subsistence hunting, fishing, and gathering.

§ 1000.115 Does the law establish a contracting preference for programs of special geographic, historical, or cultural significance?

Yes. If there is a special geographic, historical, or cultural significance to the program or activity administered by the bureau, the law affords the bureau the discretion to include the programs or activities in an AFA on a non-competitive basis.

§ 1000.116 Are there any programs that may not be included in an AFA?

Yes. Section 403(k) of the Act excludes from the program:

(a) Inherently federal functions; and

(b) Programs where the statute establishing the existing program does not authorize the type of participation sought by the tribe/consortium, except as provided in § 1000.117.

§ 1000.117 Does a tribe/consortium need to be identified in an authorizing statute in order for a program or element of a program to be included in a non-BIA AFA?

No. The Act favors the inclusion of a wide range of programs.

§ 1000.118 Will tribes/consortia participate in the Secretary's determination of what is to be included on the annual list of available programs?

Yes. The Secretary must consult each year with tribes/consortia participating in self-governance programs regarding which bureau programs are eligible for inclusion in AFAs.

§ 1000.119 How will the Secretary consult with tribes/consortia in developing the list of available programs?

(a) On, or as near as possible to, October 1 of each year, the Secretary must distribute to each participating self-governance tribe/consortium the previous year's list of available programs in accordance with section 405(c)(4) of the Act. The list must indicate all of the Secretary's proposed additions and revisions for the coming year with an explanation.

(b) The tribes/consortia receiving the proposed list will have 30 days from receipt to comment in writing on the Secretary's proposed revisions and to provide additions and revisions of their own for consideration by the Secretary.

(c) The Secretary will carefully consider these comments before publishing the list as required by section 405(c)(4) of the Act.

(d) If the Secretary does not plan to include a tribal suggestion or revision in the final published list, he/she must provide an explanation of his/her reasons if requested by a tribe.

§ 1000.120 What else is on the list in addition to eligible programs?

The list will also include programmatic targets and an initial point of contact for each bureau. Programmatic targets will be established as part of the consultation process described in § 1000.119.

§ 1000.121 May a bureau negotiate with a tribe/consortium for programs not specifically included on the annual section 405(c) list?

Yes. The annual list will specify that bureaus will negotiate for other programs eligible under section 403(b)(2) when requested by a tribe/consortium. Bureaus may negotiate for

section 403(c) programs whether or not they are on the list.

§ 1000.122 How will a bureau negotiate an annual funding agreement for a program of special geographic, historical, or cultural significance to more than one tribe?

(a) If a program is of special geographic, historical, or cultural significance to more than one tribe, the bureau may allocate the program among the several tribes/consortia or select one tribe/consortium with whom to negotiate an AFA.

(b) In making a determination under paragraph (a) of this section, the bureau will, in consultation with the affected tribes, consider:

(1) The special significance of each tribe's or consortium member's interest; and

(2) The statutory objectives being served by the bureau program.

(c) The bureau's decision will be final for the Department.

§ 1000.123 When will this determination be made?

It will occur during the pre-negotiation process, subject to the timeframes in §§ 1000.161 and 1000.162.

Funding

§ 1000.124 What funds are to be provided in an AFA?

The amount of funding to be included in the AFA is determined using the following principles:

(a) *403(b)(2) programs*. In general, funds are provided in an AFA to the tribe/consortium in an amount equal to the amount that it is eligible to receive under section 106 of Pub. L. 93–638.

(b) *403(c) Programs*.

(1) The AFA will include:

(i) Amounts equal to the direct costs the bureau would have incurred were it to operate that program at the level of work mutually agreed to in the AFA; and

(ii) Allowable indirect costs.

(2) A bureau is not required to include management and support funds from the regional or central office level in an AFA, unless:

(i) The tribe/consortium will perform work previously performed at the regional or central office level;

(ii) The work is not compensated in the indirect cost rate; and

(iii) Including management and support costs in the AFA that does not result in the tribe/consortium being paid twice for the same work when the Office of the Inspector General (OIG) indirect cost rate is applied.

(c) *Funding Limitations*. The amount of funding must be subject to the availability and level of Congressional appropriations to the bureau for that program or activity. As the various bureaus use somewhat differing budgeting practices, determining the amount of funds available for inclusion in the AFA for a particular program or activity is likely to vary among bureaus or programs.

(1) The AFA may not exceed the amount of funding the bureau would have spent for direct operations and indirect support and management of that program in that year.

(2) The AFA must not include funding for programs still performed by the bureau.

§ 1000.125 How are indirect cost rates determined?

The Department's Inspector General or other cognizant inspector general and the tribe/consortium negotiate indirect cost rates based on the provisions of OMB Circular A–87 or other applicable Office of Management and Budget cost circular and the provisions of Title I of Pub. L. 93–638. These rates are used generally by all federal agencies for contracts and grants with the tribe/consortium, including self-governance agreements. See § 1000.129.

§ 1000.126 Will the established indirect cost rate always apply to new AFAs?

No.

(a) A tribe/consortium's existing indirect cost rate should be reviewed and renegotiated with the inspector general or other cognizant agency's inspector general if:

(1) Using the previously negotiated rate would include the recovery of indirect costs that are not reasonable, allocable, or allowable to the relevant program; or

(2) If the previously negotiated rate would result in an underrecovery by the tribe/consortium.

(b) If a tribe/consortium has a fixed amount indirect cost agreement under OMB Circular A–87, then:

(1) Renegotiation is not required and the duration of the fixed amount agreement will be that provided for in the fixed amount agreement; or

(2) The tribe/consortium and bureau may negotiate an indirect cost amount or rate for use only in that AFA without the involvement of the appropriate inspector general.

§ 1000.127 How does the Secretary's designee determine the amount of indirect contract support costs?

The Secretary's designee determines the amount of indirect contract support costs by:

(a) Applying the negotiated indirect cost rate to the appropriate direct cost base;

(b) Using the provisional rate; or

(c) Negotiating the amount of indirect contract support.

§ 1000.128 Is there a predetermined cap or limit on indirect cost rates or a fixed formula for calculating indirect cost rates?

No. Indirect cost rates vary from tribe to tribe. The Secretary's designee should refer to the appropriate OIG's rates for individual tribes, which apply government-wide. Although this cost rate is not capped, the amount of funds available for inclusion is capped at the level available under the relevant appropriation.

§ 1000.129 Instead of the appropriate OIG rate, is it possible to establish a fixed amount or negotiated rate for indirect costs where funds are limited?

Yes. OMB Circular A–87 encourages agencies to test fee-for-service alternatives. If the parties agree to a fixed price, fee-for-service agreement, then they must use OMB Circular A–87 as a guide in determining the appropriate price. Where limited appropriated funds are available, negotiating the fixed cost option or another rate may facilitate reaching an agreement with that tribe/consortium.

Other Terms and Conditions

§ 1000.130 May the bureaus negotiate terms to be included in an AFA for non-Indian programs?

Yes, as provided for by section 403(b)(2) and 403(c) and as necessary to meet program mandates.

Subpart G—Negotiation Process for Annual Funding Agreements

Purpose

§ 1000.150 What is the purpose of this subpart?

This subpart provides the process and timelines for negotiating a self-governance compact with the Department and an AFA with any bureau.

(a) For a newly selected or currently participating tribe/consortium negotiating an initial AFA with any bureau, §§ 1000.156–1000.170.

(b) For a participating tribe/consortium negotiating a successor AFA with any bureau, §§ 1000.174–1000.176.

Negotiating a Self-Governance Compact

§ 1000.151 What is a self-governance compact?

A self-governance compact is an executed document which affirms the government-to-government relationship

between a self-governance tribe and the United States. The compact differs from an AFA in that parts of the compact apply to all bureaus within the Department of the Interior rather than to a single bureau.

§ 1000.152 What is included in a self-governance compact?

A model format for self-governance compacts appears in appendix A. A self-governance compact should generally include the following:

(a) The authority and purpose;

(b) Terms, provisions, and conditions of the compact;

(c) Obligations of the tribe and the United States; and

(d) Other provisions.

§ 1000.153 Can a tribe negotiate other terms and conditions not contained in the model compact?

Yes. The Secretary and a self-governance tribe/consortium may negotiate additional terms relating to the government-to-government relationship between the tribe(s) and the United States. For BIA programs, a tribe/consortium may include any term that may be included in a contract and funding agreement under Title I in the model compact contained in appendix A.

§ 1000.154 Can a tribe/consortium have an AFA without entering into a compact?

Yes, at the tribe's/consortium's option.

§ 1000.155 Are provisions included in compacts that were negotiated before this part is implemented effective after implementation?

Yes.

(a) All provisions in compacts that were negotiated with the BIA prior to this part being finally promulgated by the Department shall remain in effect for BIA programs only after promulgation of this part, provided that each compact contains:

(1) Provisions that are authorized by the Tribal Self-Governance Act of 1994; and

(2) Are in compliance with other applicable federal laws; and

(3) Are consistent with this part.

(b) The BIA will notify the tribe/consortium with a previously negotiated compact whenever it asserts that a provision in such compact is not in accordance with the foregoing conditions and upon such notification the parties shall renegotiate the provision within 60 days.

(c) If renegotiation is not successful within 60 days of the notice being provided, the BIA's determination is final for the bureau and enforceability of the provisions shall be subject to the appeals process of this part. Pending a final decision through the appeals process, BIA's determination shall be stayed.

Negotiation of Initial Annual Funding Agreements

§ 1000.156 What are the phases of the negotiation process?

There are two phases in the negotiation process:

(a) The information phase; and

(b) The negotiation phase.

§ 1000.157 Who may initiate the information phase?

Any tribe/consortium which has been admitted to the program or to the applicant pool may initiate the information phase.

§ 1000.158 Is it mandatory to go through the information phase before initiating the negotiation phase?

No. Tribes may go directly to the negotiation phase.

§ 1000.159 How does a tribe/consortium initiate the information phase?

A tribe/consortium initiates the information phase by submitting a letter of interest to the bureau administering a program that the tribe/consortium may want to include in its AFA. A letter of interest may be mailed, telefaxed, or hand-delivered to:

(a) The Director, OSG, if the request is for information about BIA programs;

(b) The non-BIA bureau's self-governance representative identified in the Secretary's annual section 405(c) listing in the **Federal Register**, if the request is for information concerning programs of non-BIA bureaus.

§ 1000.160 What is the letter of interest?

A letter of interest is the initial indication of interest submitted by the tribe/consortium informing the bureau of the tribe/consortium's interest in seeking information for the possible negotiation of one or more bureau programs. For non-BIA bureaus, the program and budget information request should relate to the program and activities identified in the Secretary's section 405(c) list in the **Federal Register** or a section 403(c) request. A letter of interest should identify the following:

(a) As specifically as possible, the program a tribe/consortium is interested in negotiating under an AFA;

(b) A preliminary brief explanation of the cultural, historical, or geographic significance to the tribe/consortium of the program, if applicable;

(c) The scope of activity that a tribe/consortium is interested in including in an AFA;

(d) Other information that may assist the bureau in identifying the programs that are included or related to the tribe/consortium's request;

(e) A request for information that indicates the type and/or description of information that will assist the tribe/consortium in pursuing the negotiation process;

(f) A designated tribal contact;

(g) A request for information on any funds that may be available within the bureau or other known possible sources of funding for planning and negotiating an AFA;

(h) A request for information on any funds available within the bureau or from other sources of funding that the tribe/consortium may include in the AFA for planning or performing programs or activities; and

(i) Any requests for technical assistance to be provided by the bureau in preparing documents or materials that may be required for the tribe/consortium in the negotiation process.

§ 1000.161 When should a tribe/consortium submit a letter of interest?

A letter of interest may be submitted at any time. Letters should be submitted to the appropriate non-BIA bureaus by March 1; letters should be submitted to BIA by April 1 for fiscal year tribes/consortia or May 1 for calendar year tribes/consortia.

§ 1000.162 What steps does the bureau take after a letter of interest is submitted by a tribe/consortium?

(a) Within 15 calendar days of receipt of a tribe/consortium's letter of interest, the bureau will notify the tribe/consortium about who will be designated as the bureau's representative to be responsible for responding to the tribal requests for information. The bureau representative shall act in good faith in fulfilling the following responsibilities:

(1) Providing all budget and program information identified in paragraph (b) of this section, from each organizational level of the bureau(s);

(2) Notifying any other bureau requiring notification and participation under this part.

(b) Within 30 calendar days of receipt of the tribe/consortium's letter of interest:

(1) To the extent that such reasonably related information is available, the bureau representative is to provide the information listed in paragraph (c) of this section consistent with the bureau's budgetary process;

(2) A written explanation of why the information is not available or not being provided to the tribe/consortium's contact and the date by which other available information will be provided; or

(3) If applicable, a written explanation why the program is unavailable for negotiation.

(c) Information to be made available to the tribe/consortium's contact, subject to the conditions of paragraph (b) of this section, includes:

(1) Information regarding program, budget, staffing, and locations of the offices administering the program and related administrative support program identified by the tribe/consortium;

(2) Information contained in the previous year, present year, and next year's budget proposed by the President at the national program level and the regional/local level.

(3) When appropriate, the bureau will be available to meet with tribal representatives to explain the budget information provided.

(4) Information used to support budget allocations for the programs identified (e.g., full time equivalents and other relevant factors).

(5) Information used to operate and/or evaluate a program, such as statutory and regulatory requirements and program standards.

(6) If applicable, information regarding how a program is administered by more than one bureau, including a point of contact for information for the other bureau(s); and

(7) Other information requested by the tribe/consortium in its letter of interest.

(d) If a bureau fails to provide reasonably related information requested by a tribe/consortium, the tribe/consortium may request in writing that the relevant bureau head make a final decision for the bureau and/or make an appropriate filing under the Freedom of Information Act.

§ 1000.165 How does a newly selected tribe/consortium initiate the negotiation phase?

An authorized tribal/consortium official submits a written request to negotiate an AFA under the Act.

§ 1000.166 To whom does the newly selected tribe/consortium submit the request to negotiate an AFA and what information should it contain?

(a) For BIA programs, the tribe/consortium should submit the request to negotiate to the Director, OSG. The request should identify the lead negotiator(s) for the tribe/consortium.

(b) For non-BIA bureaus, the tribe/consortium should submit the request to negotiate to the bureau representative designated to respond to the tribe/consortium's request for information. The request should identify the lead negotiator(s) for the tribe/consortium and, to the extent possible, the specific program(s) that the tribe/consortium seeks to negotiate.

§ 1000.167 What is the deadline for a newly selected tribe/consortium to submit a request to negotiate an AFA?

(a) For BIA programs, by April 1 or May 1, respectively, for fiscal year or calendar year tribes/consortia.

(b) For non-BIA programs, by May 1. The request may be submitted later than this date when the bureau and the tribe/consortium agree that administration for a partial year funding agreement is feasible.

§ 1000.168 How and when does the bureau respond to a request to negotiate?

Within 15 days of receiving a tribe/consortium's request to negotiate, the bureau will take the steps in this section. If more than one bureau is involved, a lead bureau must be designated to conduct negotiations.

(a) If the program is contained on the section 405(c) list, the bureau will identify the lead negotiator(s) and awarding official(s) for executing the AFA.

(b) If the program is potentially of a special geographic, cultural, or historic significance to a tribe/consortium, the bureau will schedule a pre-negotiation meeting with the tribe/consortium as soon as possible. The purpose of the meeting is to assist the bureau in determining if the program is available for negotiation. Within 10 days after the meeting:

(1) If the program is available for negotiation, the bureau will identify the lead negotiator(s) and awarding official(s); or

(2) If the program is unavailable for negotiation, the bureau will give to the tribe/consortium a written explanation of why the program is unavailable for negotiation.

§ 1000.169 What is the process for conducting the negotiation phase?

(a) Within 30 days of receiving a written request to negotiate, the bureau and the tribe/consortium will agree to a date to conduct an initial negotiation meeting. Subsequent meetings will be held with reasonable frequency at reasonable times.

(b) Tribe/consortium and bureau lead negotiators must:

(1) Be authorized to negotiate on behalf of their government; and

(2) Involve all necessary persons in the negotiation process.

(c) Once negotiations have been successfully completed, the bureau and tribe/consortium will prepare and either execute or disapprove an AFA within 30 days or by a mutually agreed upon date.

§ 1000.170 What issues must the bureau and the tribe/consortium address at negotiation meetings?

The negotiation meetings referred to in § 1000.169 must address at a minimum the following:

(a) The specific tribe/consortium proposal(s) and intentions;

(b) Legal or program issues that the bureau or the tribe/consortium identify as concerns;

(c) Options for negotiating programs and related budget amounts, including mutually agreeable options for developing alternative formats for presenting budget information to the tribe/consortium;

(d) Dates for conducting and concluding negotiations;

(e) Protocols for conducting negotiations;

(f) Responsibility for preparation of a written summary of the discussions; and

(g) Who will prepare an initial draft of the AFA.

§ 1000.171 What happens when the AFA is signed?

(a) After all parties have signed the AFA, a copy is sent to the tribe/consortium.

(b) The Secretary forwards copies of the AFA to:

(1) The House Subcommittee on Native Americans and Insular Affairs; and

(2) The Senate Committee on Indian Affairs;

(c) For BIA programs, the AFA is also forwarded to each Indian tribe/consortium served by the BIA Agency that serves any tribe/consortium that is a party to the AFA.

§ 1000.172 When does the AFA become effective?

The effective date is not earlier than 90 days after the AFA is submitted to the Congressional committees under § 1000.171(b).

§ 1000.173 What happens if the tribe/consortium and bureau negotiators fail to reach an agreement?

(a) If the tribe/consortium and bureau representatives do not reach agreement during the negotiation phase by the mutually agreed to date for completing negotiations, the tribe/consortium and the bureau may each make a last and best offer to the other party.

(b) If a last and best offer is not accepted within 15 days, the bureau will provide a written explanation to the

tribe/consortium explaining its reasons for not entering into an AFA for the requested program, together with the applicable statement prescribed in subpart R of this part, concerning appeal or review rights.

(c) The tribe/consortium has 30 days from receipt of the bureau's written explanation to file an appeal. Appeals are handled in accordance with subpart R of this part.

Negotiation Process for Successor Annual Funding Agreements

§ 1000.174 What is a successor AFA?

A successor AFA is a funding agreement negotiated after a tribe/consortium's initial agreement with a bureau for continuing to perform a particular program. The parties to the AFA should generally use the terms of the existing AFA to expedite and simplify the exchange of information and the negotiation process.

§ 1000.175 How does the tribe/consortium initiate the negotiation of a successor AFA?

Although a written request is desirable to document the precise request and date of the request, a written request is not mandatory. If either party anticipates a significant change in an existing program in the AFA, it should notify the other party of the change at the earliest possible date so that the other party may plan accordingly.

§ 1000.176 What is the process for negotiating a successor AFA?

The tribe/consortium and the bureau use the procedures in §§ 1000.169–1000.170.

Subpart H—Limitation and/or Reduction of BIA Services, Contracts, and Funds

§ 1000.180 What is the purpose of this subpart?

This subpart prescribes the process which the Secretary uses to determine whether a BIA self-governance funding agreement causes a limitation or reduction in the services, contracts, or funds that any other Indian tribe/consortium or tribal organization is eligible to receive under self-determination contracts, other self-governance compacts, or direct services from BIA. This type of limitation is prohibited by section 406(a) of Pub. L. 93–638. For purposes of this subpart, tribal organization means an organization eligible to receive services, contracts, or funds under Section 102 of Pub. L. 93–638.

§ 1000.181 To whom does this subpart apply?

Participating and non-participating tribes/consortia and tribal organizations are subject to this subpart. It does not apply to the general public and non-Indians.

§ 1000.182 What services, contracts, or funds are protected under section 406(a)?

Section 406(a) protects against the actual reduction or limitation of services, contracts, or funds.

§ 1000.183 Who may raise the issue of limitation or reduction of services, contracts, or funding?

The BIA or any affected tribe/consortium or tribal organization may raise the issue that a BIA self-governance AFA limits or reduces particular services, contracts, or funding for which it is eligible.

§ 1000.184 When must the BIA raise the issue of limitation or reduction of services, contracts, or funding?

(a) From the beginning of the negotiation period until the end of the first year of implementation of an AFA, the BIA may raise the issue of limitation or reduction of services, contracts, or funding. If the BIA and a participating tribe/consortium disagree over the content of the list of residual functions or amounts, a participating tribe/consortium may ask the Deputy Commissioner—Indian Affairs to reconsider residual levels for particular programs. [See § 1000.92 (d)(1)–(3)]

(b) After the AFA is signed, the BIA must raise the issue of any undetermined funding amounts within 30 days after the final funding level is determined. The BIA may not raise this issue after this period has elapsed.

§ 1000.185 When must an affected tribe/consortium or tribal organization raise the issue of a limitation or reduction of services, contracts, or funding for which it is eligible?

(a) A tribe/consortium or tribal organization may raise the issue of limitation or reduction of services, contracts, or funding for which it is eligible during:

(1) Area-wide tribal shares meetings occurring before the first year of implementation of an AFA;

(2) Within the 90-day review period before the effective date of the AFA; and

(3) The first year of implementation of an AFA.

(b) Any tribe/consortium or tribal organization claiming a limitation or reduction of contracts, services, or funding for which it is eligible must notify, in writing, both the Department and the negotiating tribe/consortium. Claims may only be filed within the periods specified in paragraph (a) of this section.

§ 1000.186 What must be included in a finding by the BIA or in a claim by or an affected tribe/consortium or tribal organization regarding the issue of a limitation or reduction of services?

Written explanation identifying the alleged limitation or reduction of services, contracts, or funding for which it is eligible.

§ 1000.187 How will the BIA resolve a claim?

All findings and claims timely made in accordance with §§ 1000.184–1000.185 will be resolved in accordance with 25 CFR part 2.

§ 1000.188 How must a limitation or reduction in services, contracts, or funds be remedied?

(a) If funding a participating tribe/consortium will limit or reduce services, contracts, or funds for which another tribe/consortium or tribal organization is eligible, BIA must remedy the reduction as follows:

(1) In the current AFA year, the BIA must use shortfall funding, supplemental funding, or other available BIA resources; and

(2) In a subsequent AFA year, the BIA may adjust the AFA funding in an AFA to correct a finding of actual reduction in services, contracts, or funds for that subsequent year.

(b) All adjustments under this section must be mutually agreed between the BIA and the participating tribe/consortium.

Subpart I—Public Consultation Process

§ 1000.190 When does a non-BIA bureau use a public consultation process related to the negotiation of an AFA?

When required by law or when appropriate under bureau discretion, a bureau may use a public consultation process.

§ 1000.191 Will the bureau contact the tribe/consortium before initiating public consultation for a non-BIA AFA under negotiation?

Yes. The bureau and the tribe/consortium will discuss the consultation process to be used.

(a) When the public consultation process is required by law, the bureau will follow the required process and will involve the tribe/consortium in that process to the maximum extent possible.

(b) When the public consultation process is a matter of bureau discretion at tribal request, the tribe/consortium

and the bureau, unless prohibited by law, will jointly develop guidelines for that process, including the conduct of any future public meetings. The bureau and the tribe/consortium will jointly identify a list of potential project beneficiaries, third-party stakeholders, or third-party users (affected parties) for use in the public consultation process.

§ 1000.192 What is the role of the tribe/consortium when a bureau initiates a public meeting?

When a bureau initiates a public meeting with affected parties, it will take the following actions.

(a) The bureau will notify the tribe/consortium of the meeting time, place, and invited parties:

(1) Ten days in advance, if possible; or

(2) If less than ten days in advance, at the earliest practical time.

(b) At the time of notifying the tribe/consortium, the bureau will invite the tribe/consortium to participate in and, when not prohibited by law, to co-sponsor or co-facilitate the meeting.

(c) When possible, the bureau and tribe/consortium should meet to plan and discuss the conduct of the meeting, meeting protocols, and general participation in the proposed consultation meeting.

(d) The bureau and tribe/consortium will conduct the meeting in a manner that facilitates and does not undermine the government-to-government relationship and self-governance.

(e) The tribe/consortium may provide technical support to the bureau to enhance the consultation process, as mutually agreed.

§ 1000.193 What should the bureau do if it is invited to attend a meeting with respect to the tribe/consortium proposed AFA?

If the bureau is invited to participate in meetings, hearings, etc., held or conducted by other parties, where the subject matter of the AFA under negotiation is expected to be raised, the bureau will notify the tribe/consortium at the earliest practical time, and should encourage the meeting sponsor to invite the tribe/consortium to participate.

§ 1000.194 Will the bureau and the tribe/consortium share information concerning inquiries about the tribes/consortia and the annual funding agreement?

Yes. The bureau and tribe/consortium will exchange information about other inquiries relating to the AFA under negotiation from affected or interested parties.

Subpart J—Waiver of Regulations

§ 1000.200 What regulations apply to self-governance tribes?

All promulgated regulations that govern the operation of programs included in an AFA will apply unless waived under this subpart. To the maximum extent practical, the parties should identify such regulations in the AFA.

§ 1000.201 Can the Secretary grant a waiver of regulations to a tribe/consortium?

Yes. A tribe/consortium may request the Secretary to grant a waiver of all or any part of the Department of the Interior regulation(s) applicable to a program, in whole or in part, operated by a tribe/consortium under an AFA.

§ 1000.202 How does a tribe/consortium obtain a waiver?

To obtain a waiver, the tribe/consortium must:

(a) Submit a written request from the designated tribal official to the Director for BIA programs or the appropriate bureau/office director for non-BIA programs;

(b) Identify the regulation to be waived and the reasons for the request;

(c) Identify the programs to which the waiver would apply;

(d) Identify what provisions, if any, would be substituted in the AFA for the regulation to be waived; and

(e) When applicable, identify the effect of the waiver on any trust programs or resources.

§ 1000.203 When can a tribe/consortium request a waiver of a regulation?

A tribe/consortium may request waiver of a regulation;

(a) As part of the negotiation process; and

(b) After an AFA has been executed.

§ 1000.204 How can a tribe/consortium expedite the review of a regulation waiver request?

A tribe/consortium may request a meeting or other informal discussion with the appropriate bureau officials before submitting a waiver request.

(a) To set up a meeting, the tribe/consortium should contact:

(1) For BIA programs, the Director, OSG;

(2) For non-BIA programs, the designated representative of the bureau.

(b) The meeting or discussion is intended to provide:

(1) A clear understanding of the nature of the request;

(2) Necessary background and information; and

(3) An opportunity for the bureau to offer appropriate technical assistance.

§ 1000.205 Are such meetings or discussions mandatory?

No.

§ 1000.206 On what basis may the Secretary deny a waiver request?

The Secretary may deny a waiver request if:

(a) For a BIA program, the requested waiver is prohibited by federal law; or

(b) For a non-BIA program, the requested waiver is

(1) Prohibited by federal law; or

(2) Inconsistent with the express provisions of the AFA.

§ 1000.207 What happens if the Secretary denies the waiver request?

The Secretary issues a written decision stating:

(a) The basis for the decision;

(b) The decision is final for the Department; and

(c) That the tribe/consortium may request reconsideration of the denial.

§ 1000.208 What are examples of waivers prohibited by law?

Examples of when a waiver is prohibited by federal law include:

(a) When the effect would be to waive or eliminate express statutory requirements;

(b) When a statute authorizes civil and criminal penalties;

(c) When it would result in a failure to ensure that proper health and safety standards are included in an AFA (section 403(e)(2));

(d) When it would result in a reduction of the level of trust services that would have been provided by the Secretary to individual Indians (section 403(g)(4));

(e) When it would limit or reduce the services, contracts, or funds to any other Indian tribe or tribal organization (section 406(a));

(f) When it would diminish the federal trust responsibility to Indian tribes, individual Indians or Indians with trust allotments (section 406(b)); or

(g) When it would violate federal case law.

§ 1000.209 May a tribe/consortium propose a substitute for a regulation it wishes to be waived?

Yes. Where a tribe/consortium wishes to replace the waived regulation with a substitute that otherwise maintains the requirements of the applicable federal law, the Secretary may be able to approve the waiver request. The tribe/consortium and officials of the relevant bureau must negotiate to develop a suggested substitution.

§ 1000.210 How is a waiver request approval documented for the record?

The waiver decision is made part of the AFA by attaching a copy of it to the AFA and by mutually executing any necessary conforming amendments to the AFA.

§ 1000.211 How does a tribe/consortium request a reconsideration of the Secretary's denial of a waiver?

(a) The tribe/consortium may request reconsideration of a waiver denial. To do so, the tribe/consortium must submit a request to:

(1) The Director, OSG, for BIA programs; or

(2) The appropriate bureau head, for non-BIA programs.

(b) The request must be filed within 30 days of the day the decision is received by certified mail, return receipt requested, or by hand delivery. A request submitted by mail will be considered filed on the postmark date.

(c) The request must identify the issues to be addressed, including a statement of reasons supporting the request.

§ 1000.212 Is there a deadline for the agency to respond to a request for reconsideration?

Yes. The Secretary must issue a written decision within 30 days of the Department's receipt of a request for reconsideration. This decision is final for the Department and no administrative appeal may be made.

Subpart K—Construction

§ 1000.220 What construction programs included in an AFA are subject to this subpart?

(a) All BIA and non-BIA construction programs included in an AFA are subject to this subpart. This includes design, construction, repair, improvement, expansion, replacement, or demolition of buildings or facilities, and other related work for federal or federally-funded tribal facilities and projects.

(b) The following programs and activities are not construction programs and activities:

(1) Activities limited to providing planning services;

(2) Housing Improvement Program or road maintenance program activities of the BIA;

(3) Operation and maintenance programs; and

(4) Non-403(c) programs that are less than $100,000, subject to section 403(e)(2) of the Act, other applicable federal law, and § 1000.226 of this subpart.

§ 1000.221 Is an agency relationship created by this subpart?

No, except as provided by federal law, by the provisions of an AFA or by federal actions taken pursuant to this subpart which constitutes an agency relationship.

§ 1000.222 What provisions relating to a construction program may be included in an AFA?

The Secretary and the tribe/consortium may negotiate to apply specific provisions of the Office of Federal Procurement and Policy Act and Federal Acquisition Regulations to a construction part of an AFA. Absent a negotiated agreement, such provisions and regulatory requirements do not apply.

§ 1000.223 What provisions must be included in an AFA that contains a construction program?

As part of an AFA which contains a construction program, the following requirements must be addressed:

(a) The manner in which the Secretary and the tribe/consortium must ensure that proper health and safety standards are provided for in the implementation of the AFA, including but not limited to:

(1) The use of architects and engineers licensed to perform the type of construction involved in the AFA;

(2) Applicable federal, state, local or tribal building codes and applicable engineering standards appropriate for the particular project; and

(3) Necessary inspections and testing by the tribe.

(b) Applicable federal laws, program statutes, and regulations;

(c) The services to be provided, the work to be performed, and the responsibilities of the tribe/consortium and the Secretary under the AFA.

(d) The Secretary may require the tribe/consortium to provide brief progress reports and financial status reports. The parties may negotiate in the AFA the frequency, format, and content of the reporting requirement. As negotiated, such reports may include:

(1) A narrative of the work accomplished;

(2) The percentage of the work completed;

(3) A report of funds expended during the reporting period; and

(4) The total funds expended for the project.

(e) The Secretary may require a tribe/consortium to suspend all or part of the work under a construction portion of an AFA for up to 30 days for reasons such as differing site conditions that adversely affect health and safety or the discovery of work that fails to substantially carry out the terms of the AFA without good cause. Reasons for suspension other than specified in this paragraph must be specifically negotiated in the AFA.

(1) Unless otherwise required by federal law, before suspending work the Secretary must provide a 5-working-day written notice and an opportunity for the Indian tribe/consortium to correct the problem.

(2) The tribe/consortium must be compensated for reasonable costs due to any suspension of work that occurred through no fault of the tribe/consortium. Project-specific funds available in the AFA must be used for this purpose.

§ 1000.224 May a tribe/consortium continue work with construction funds remaining in an AFA at the end of the funding year?

Yes. Any funds remaining in an AFA at the end of the funding year may be spent for construction under the terms of the AFA.

§ 1000.225 Must an AFA that contains a construction project or activity incorporate federal construction standards?

No. The Secretary may provide information about federal standards as early as possible in the construction process. If tribal construction standards are consistent with or exceed applicable federal standards, then the Secretary must accept the Indian tribe/consortium's proposed standards. The Secretary may accept commonly accepted industry construction standards.

§ 1000.226 May the Secretary require design provisions and other terms and conditions for construction programs or activities included in an AFA under section 403(c) of the Act?

Yes. The relevant bureau may provide to the tribe/consortium project design criteria and other terms and conditions which are required for such a project. The project must be completed in accordance with the terms and conditions set forth in the AFA.

§ 1000.227 What role does the Indian tribe/consortium have regarding a construction program included in an AFA?

The tribe/consortium has the following role regarding a construction portion of an AFA:

(a) Under the Act, the Indian tribe/consortium must successfully complete the project in accordance with the terms and conditions in the AFA.

(b) The tribe/consortium must give the Secretary timely notice of any proposed changes to the project that require an increase to the negotiated funding amount or an increase in the negotiated performance period or any

other significant departure from the scope or objective of the project. The tribe/consortium and Secretary may negotiate to include timely notice requirements in the AFA.

§ 1000.228 What role does the Secretary have regarding a construction program in an AFA?

The Secretary has the following role regarding a construction program contained in an AFA:

(a) Except as provided in § 1000.223, the Secretary may review and approve planning and design documents in accordance with terms negotiated in the AFA to ensure health and safety standards and compliance with federal law and other program mandates;

(b) Unless otherwise agreed to in an AFA, the Secretary reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use for federal government purposes, designs produced in the construction program that are funded by AFA monies, including:

(1) The copyright to any work developed under a contract or subcontract; and

(2) Any rights of copyright that an Indian tribe/consortium or a tribal contractor purchases through the AFA;

(c) The Secretary may conduct on-site monitoring visits as negotiated in the AFA;

(d) The Secretary must approve any proposed changes in the construction program or activity that require an increase in the negotiated AFA funding amount or an increase in the negotiated performance period or are a significant departure from the scope or objective of the construction program as agreed to in the AFA;

(e) The Secretary may conduct final project inspection jointly with the Indian tribe/consortium and may accept the construction project or activity as negotiated in the AFA;

(f) Where the Secretary and the tribe/consortium share construction program activities, the AFA may provide for the exchange of information;

(g) The Secretary may reassume the construction portion of an AFA if there is a finding of:

(1) A significant failure to substantially carry out the terms of the AFA without good cause; or

(2) Imminent jeopardy to a physical trust asset, to a natural resource, or that adversely affects public health and safety as provided in subpart M of this part.

§ 1000.229 How are property and funding returned if there is a reassumption for substantial failure to carry out an AFA?

If there is a reassumption for substantial failure to carry out an AFA property and funding will be returned as provided in subparts M and N of this part.

§ 1000.230 What happens when a tribe/consortium is suspended for substantial failure to carry out the terms of an AFA without good cause and does not correct the failure during the suspension?

(a) Except when the Secretary makes a finding of imminent jeopardy to a physical trust asset, a natural resource, or public health and safety as provided in subpart M of this part, a finding of substantial failure to carry out the terms of the AFA without good cause must be processed pursuant to the suspension of work provision of § 1000.223(e).

(b) If the substantial failure to carry out the terms of the AFA without good cause is not corrected or resolved during the suspension of work, the Secretary may initiate a reassumption at the end of the 30-day suspension of work if an extension has not been negotiated. Any unresolved dispute will be processed in accordance with the Contracts Dispute Act.

Subpart L—Federal Tort Claims

§ 1000.240 What does this subpart cover?

This subpart explains the applicability of the Federal Tort Claims Act (FTCA). This subpart covers:

(a) Claims arising out of the performance of functions under self-governance AFAs; and

(b) Procedures for filing claims under the FTCA.

§ 1000.241 What principal statutes and regulations apply to FTCA coverage?

The Federal Tort Claims Act (28 U.S.C. 1346(b), 2401, 2671–2680) and related Department of Justice regulations at 28 CFR 14.

§ 1000.242 Do tribes/consortia need to be aware of areas which the FTCA does not cover?

Yes. There may be claims against self-governance tribes/consortia which are not covered by the FTCA, claims which may not be pursued under the FTCA, and remedies that are excluded by the FTCA. This section contains general guidance on these matters but is not intended as a definitive description. Coverage is subject to review by the Department of Justice and the courts on a case-by-case basis.

(a) *Claims expressly barred by the FTCA and which therefore may not be made against the United States or an Indian tribe/consortium*. Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, unless otherwise authorized by 28 U.S.C. 2680(h).

(b) *Claims which may not be pursued under the FTCA*.

(1) Claims against contractors arising out of the performance of contracts with self-governance tribes/consortia;

(2) Claims for on-the-job injuries that are covered by worker's compensation;

(3) Claims for breach of contract rather than tort claims;

(4) Claims resulting from activities performed by an employee which are outside the scope of employment; or

(5) A claim which is brought for a violation of a statute of the United States under which an action against an individual is otherwise authorized.

(c) *Remedies expressly excluded by the FTCA and therefore barred*.

(1) Punitive damages, unless otherwise authorized by 28 U.S.C. 2674;

(2) other remedies not permitted under applicable law; and

(3) Interest before judgment.

§ 1000.243 Is there a deadline for filing FTCA claims?

Yes. Claims must be filed within 2 years of the date of accrual. (28 U.S.C. 2401).

§ 1000.244 How long does the federal government have to process a FTCA claim after the claim is received by the federal agency, before a lawsuit may be filed?

Six months.

§ 1000.245 Is it necessary for a self-governance AFA to include any clauses about FTCA coverage?

No, it is optional. At the request of Indian tribes/consortia self-governance AFAs must include the following clause to clarify the scope of FTCA coverage:

For purposes of Federal Tort Claims Act coverage, the tribe/consortium and its employees are deemed to be employees of the federal government while performing work under this AFA. This status is not changed by the source of the funds used by the tribe/consortium to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the tribe/consortium.

§ 1000.246 Does the FTCA apply to a self-governance AFA if the FTCA is not referred to in the AFA?

Yes.

§ 1000.247 To what extent must the tribe/consortium cooperate with the federal government in connection with tort claims arising out of the tribe/consortium's performance?

A tribe/consortium must follow the requirements in this section if a tort claim (including any proceeding before an administrative agency or court) is filed against the tribe/consortium or any of its employees that relates to performance of a self-governance AFA or tribal contract.

(a) The tribe/consortium must designate an individual to serve as tort claims liaison with the federal government.

(b) The tribe/consortium must notify the Assistant Solicitor immediately in writing, as required by 28 U.S.C. 2679(c) and § 1000.254.

(c) The tribe/consortium, through its designated tort claims liaison, must help the appropriate federal agency prepare a comprehensive, accurate, and unbiased report of the incident so that the claim may be properly evaluated. This report should be completed within 60 days of notification of the filing of the tort claim. The report should be complete in every significant detail and include as appropriate:

(1) The date, time, and exact place of the accident or incident;

(2) A concise and complete statement of the circumstances of the accident or incident;

(3) The names and addresses of tribal and/or federal employees involved as participants or witnesses;

(4) The names and addresses of all other eyewitnesses;

(5) An accurate description of all government and other privately-owned property involved and the nature and amount of damage, if any;

(6) A statement whether any person involved was cited for violating a federal, state, or tribal law, ordinance, or regulation;

(7) The tribe/consortium's determination whether any of its employees (including federal employees assigned to the tribe/consortium) involved in the incident giving rise to the tort claim were acting within the scope of their employment in carrying out the terms of an AFA when the incident occurred;

(8) Copies of all relevant documentation including available police reports, statements of witnesses, newspaper accounts, weather reports, plats, and photographs of the site or damaged property such as may be necessary or useful for purposes of claim determination by the federal agency; and

(9) Insurance coverage information, copies of medical bills, and relevant employment records.

(d) The tribe/consortium must cooperate with and provide assistance to the U.S. Department of Justice attorneys assigned to defend the tort claim, including, but not limited to, case preparation, discovery, and trial.

(e) If requested by the Secretary, the tribe/consortium must assign and subrogate all the tribe/consortium's rights and claims (except those against the federal government) arising out of a tort claim against the tribe/consortium cognizable under the FTCA.

(f) If requested by the Secretary, the tribe/consortium must authorize representatives of the Secretary to settle or defend any tort claim cognizable under FTCA and to represent the tribe/consortium in or take charge of any such action.

(g) If the federal government undertakes the settlement or defense of any claim or action, the tribe/consortium must provide all reasonable additional assistance in reaching a settlement or asserting a defense.

§ 1000.248 Does this coverage extend to contractors of self-governance AFAs?

No. Contractors or grantees providing services to the tribe/consortium are generally not covered.

§ 1000.249 Are federal employees assigned to a self-governance tribe/consortium under the Intergovernmental Personnel Act covered by the FTCA?

Yes. Federal employees assigned to a self-governance tribe/consortium under the Intergovernmental Personnel Act are covered by the FTCA to the same extent that they would be if working directly for a federal agency.

§ 1000.250 Is the FTCA the exclusive remedy for a tort claim arising out of the performance of a self-governance AFA?

Yes.

§ 1000.251 To what claims against self-governance tribes/consortia does the FTCA apply?

It applies to all tort claims arising from the performance of self-governance AFAs under the authority of Pub. L. 93–638, as amended, on or after October 1, 1989.

§ 1000.252 Does the FTCA cover employees of self-governance tribe/consortia?

Yes. If employees are working within the scope of an AFA, they are considered part of the Department of the Interior for FTCA purposes.

§ 1000.253 How are tort claims filed for the Department of the Interior?

Tort claims arising out of the performance of self-governance AFAs should be filed with the appropriate designated Department of the Interior official and with the Assistant Solicitor, Branch of Procurement and Patents, Division of General Law, Office of the Solicitor, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

§ 1000.254 What should a self-governance tribe/consortium or tribe's/consortium's employee do on receiving a tort claim?

The tribe/consortium or tribe's/consortium's employee should immediately notify the appropriate designated Department of the Interior official and the Assistant Solicitor, Branch of Procurement and Patents, Division of General Law, Office of the Solicitor, Department of the Interior, 1849 C Street NW., Washington, DC 20240, and the tribe/consortium's tort claims liaison.

§ 1000.255 If the tribe/consortium or its employee receives a summons and/or complaint alleging a tort covered by the FTCA, what should a tribe/consortium or employee do?

The tribe/consortium or tribe's/consortium's employee should immediately notify the appropriate designated Department of the Interior official and the Assistant Solicitor, Branch of Procurement and Patents, Division of General Law, Office of the Solicitor, Department of the Interior, 1849 C Street NW., Washington, DC 20240, and the tribe/consortium's tort claims liaison.

Subpart M—Reassumption

1000.259 What is the purpose of this subpart?

This subpart explains when the Secretary can reassume a program without the consent of a tribe/consortium.

§ 1000.260 When may the Secretary reassume a federal program operated by a tribe/consortium under an annual funding agreement?

The Secretary may reassume any federal program operated by a tribe/consortium upon a finding of imminent jeopardy to:

(a) A physical trust asset;

(b) A natural resource; or

(c) Public health and safety.

§ 1000.261 What is imminent jeopardy to a trust asset?

Imminent jeopardy means an immediate threat and likelihood of significant devaluation, degradation,

damage, or loss of a trust asset, or the intended benefit from the asset caused by the actions or inactions of a tribe/consortium in performing trust functions. This includes disregarding federal trust standards and/or federal law while performing trust functions if the disregard creates such an immediate threat.

§ 1000.262 What is imminent jeopardy to natural resources?

The standard for natural resources is the same as for a physical trust asset, except that a review for compliance with the specific mandatory statutory provisions related to the program as reflected in the funding agreement must also be considered.

§ 1000.263 What is imminent jeopardy to public health and safety?

Imminent jeopardy to public health and safety means an immediate and significant threat of serious harm to human well-being, including conditions that may result in serious injury, or death, caused by tribal action or inaction or as otherwise provided in an AFA.

§ 1000.264 In an imminent jeopardy situation, what is the Secretary required to do?

(a) The Secretary must immediately notify the tribe/consortium in writing following discovery of imminent jeopardy; or

(b) If there is an immediate threat to human health, safety, or welfare, the Secretary may immediately reassume operation of the program regardless of the timeframes specified in this subpart.

§ 1000.265 Must the Secretary always reassume a program, upon a finding of imminent jeopardy?

Yes. The Secretary must reassume a program within 60 days of a finding of imminent jeopardy, unless the Secretary's designated representative determines that the tribe/consortium is able to mitigate the conditions.

§ 1000.266 What happens if the Secretary's designated representative determines that the tribe/consortium cannot mitigate the conditions within 60 days?

The Secretary will proceed with the reassumption in accordance with this subpart by sending the tribe/consortium a written notice of the Secretary's intent to reassume.

§ 1000.267 What will the notice of reassumption include?

The notice of reassumption will include all of the following items. In addition, if resources are available, the Secretary may offer technical assistance to mitigate the imminent jeopardy.

(a) A statement of the reasons supporting the Secretary's finding.

(b) To the extent practical, a description of specific measures which must be taken by the tribe/consortium to eliminate imminent jeopardy.

(c) A notice that funds to carry out the program in imminent jeopardy may not be reallocated or otherwise transferred without the Secretary's written consent.

(d) A notice of intent to invoke the return of property provision of the AFA.

(e) The effective date of the reassumption if the tribe/consortium does not eliminate the imminent jeopardy. If the deadline is less than 60 days after the date of receipt, the Secretary must include a justification.

(f) The amount of funds, if any, that the Secretary believes the tribe/consortium should refund to the Department for operation of the reassumed program. This amount cannot exceed the amount provided for that program under the AFA and must be based on such factors as the time or functions remaining in the funding cycle.

§ 1000.268 How much time will a tribe/consortium have to respond to a notice of imminent jeopardy?

The tribe/consortium will have 5 days to respond to a notice of imminent jeopardy. The response must be written and may be mailed, telefaxed, or sent by electronic mail. If sent by mail, it must be sent by certified mail, return receipt requested; the postmark date will be considered the date of response.

§ 1000.269 What information must the tribe/consortium's response contain?

(a) The tribe/consortium's response must indicate the specific measures that the tribe/consortium will take to eliminate the finding of imminent jeopardy.

(b) If the tribe/consortium proposes mitigating actions different from those prescribed in the Secretary's notice of imminent jeopardy, the response must explain the reasons for deviating from the Secretary's recommendations and how the proposed actions will eliminate imminent jeopardy.

§ 1000.270 How will the Secretary reply to the tribe/consortium's response?

The Secretary will make a written determination within 10 days of the tribe/consortium's written response as to whether the proposed measures will eliminate the finding of imminent jeopardy.

§ 1000.271 What happens if the Secretary accepts the tribe/consortium's proposed measures?

The Secretary must notify the tribe/consortium in writing of the acceptance and suspend the reassumption process.

§ 1000.272 What happens if the Secretary does not accept the tribe/consortium's proposed measures?

(a) If the Secretary finds that the tribe/consortium's proposed measures will not mitigate imminent jeopardy, he/she will notify the tribe/consortium in writing of this determination and of the tribe/consortium's right to appeal.

(b) After the reassumption, the Secretary is responsible for administering the reassumed program and will take appropriate corrective action to eliminate the imminent jeopardy, which may include sending Department employees to the site.

§ 1000.273 What must a tribe/consortium do when a program is reassumed?

On the effective date of reassumption, the tribe/consortium must, at the request of the Secretary, deliver all property and equipment, and title thereto:

(a) That the tribe/consortium received for the program under the AFA; and

(b) That has a per item value in excess of $5,000, or if otherwise provided in the AFA.

§ 1000.274 When must the tribe/consortium return funds to the Department?

The tribe/consortium must repay funds to the Department as soon as practical after the effective date of the reassumption.

§ 1000.275 May the tribe/consortium be reimbursed for actual and reasonable "wind up costs" incurred after the effective date of recession?

Yes, to the extent that funds are available.

§ 1000.276 Is a tribe/consortium's general right to negotiate an annual funding agreement adversely affected by a reassumption action?

A reassumption action taken by the Secretary does not affect the tribe/consortium's ability to negotiate an AFA for programs not affected by the reassumption.

§ 1000.277 When will the Secretary return management of a reassumed program?

A reassumed program may be included in future AFAs, but the Secretary may include conditions in the terms of the AFA to ensure that the circumstances which caused jeopardy to attach do not reoccur.

Subpart N—Retrocession

§ 1000.289 What is the purpose of this subpart?

This subpart explains what happens when a tribe/consortium voluntarily returns a program to a bureau.

§ 1000.290 Is a decision by a tribe/consortium not to include a program in a successor agreement considered a retrocession?

No. A decision by a tribe/consortium not to include a program in a successor agreement is not a retrocession because the tribe/consortium is under no obligation beyond an existing AFA.

§ 1000.291 Who may retrocede a program in an annual funding agreement?

A tribe/consortium. However, the right of a consortium member to retrocede may be subject to the terms of the agreement among the members of the consortium.

§ 1000.292 How does a tribe/consortium retrocede a program?

The tribe/consortium must submit:

(a) A written notice to:

(1) The Office of Self-Governance for BIA programs; or

(2) The appropriate bureau for non-BIA programs; and

(b) A tribal resolution or other official action of its governing body.

§ 1000.293 When will the retrocession become effective?

Unless subsequently rescinded by the tribe/consortium, a retrocession is only effective on a date mutually agreed upon by the tribe/consortium and the Secretary, or as provided in the AFA.

§ 1000.294 What effect will retrocession have on the tribe/consortium's existing and future annual funding agreements?

Retrocession does not affect other parts of the AFA or funding agreements with other bureaus. A tribe/consortium may request to negotiate for and include retroceded programs in future AFAs or through a self-determination contract.

§ 1000.295 What obligation does the tribe/consortium have to return funds that were used in the operation of the retroceded program?

The tribe/consortium and the Secretary must negotiate the amount of funding to be returned to the Secretary for the operation of the retroceded program. This amount must be based on such factors as the time remaining or functions remaining in the funding cycle or as provided in the AFA.

§ 1000.296 What obligation does the tribe/consortium have to return property that was used in the operation of the retroceded program?

On the effective date of any retrocession, the tribe/consortium must return all property and equipment, and title thereto:

(a) Acquired under the AFA for the program being retroceded; and

(b) That has a per item value in excess of $5,000 at the time of the retrocession, or as otherwise provided in the AFA.

§ 1000.297 What happens to a tribe/consortium's mature contractor status if it retrocedes a program that is also available for self-determination contracting?

Retrocession has no effect on mature contractor status, provided that the three most recent audits covering activities administered by the tribe have no unresolved material audit exceptions.

§ 1000.298 How does retrocession effect a bureau's operation of the retroceded program?

The level of operation of the program will depend upon the amount of funding that is returned with the retrocession.

Subpart O—Trust Evaluation Review

§ 1000.310 What is the purpose of this subpart?

This subpart describes how the trust responsibility of the United States is legally maintained through a system of trust evaluations when tribes/consortia perform trust functions through AFAs under the tribal Self-Governance Act of 1994. It describes the principles and processes upon which trust evaluations will be based.

§ 1000.311 Does the Tribal Self-Governance Act of 1994 alter the trust responsibility of the United States to Indian tribes and individuals under self-governance?

No. The Act does, however, permit a tribe/consortium to assume management responsibilities for trust assets and resources on its own behalf and on behalf of individual Indians. Under the Act, the Secretary has a trust responsibility to conduct annual trust evaluations of tribal performance of trust functions to ensure that tribal and individual trust assets and resources are managed in accordance with the legal principles and standards governing the performance of trust functions in the event that trust assets or resources are found to be in imminent jeopardy.

§ 1000.312 What are "trust resources" for the purposes of the trust evaluation process?

(a) Trust resources include property and interests in property:

(1) That are held in trust by the United States for the benefit of a tribe or individual Indians; or

(2) That are subject to restrictions upon alienation. (See for example 25 CFR 272.2(r))

(b) Trust assets include:

(1) Other assets, trust revenue, royalties, or rental, including natural resources, land, water, minerals, funds, property, assets, or claims, and any intangible right or interest in any of the foregoing;

(2) Any other property, asset, or interest therein, or treaty right for which the United States is charged with a trust responsibility. For example, water rights and off-reservation treaty rights.

(c) This definition defines trust resources for purposes of the trust evaluation process only.

§ 1000.313 What are "trust functions" for the purposes of the trust evaluation process?

Trust functions are those programs necessary to the management of assets held in trust by the United States for an Indian tribe or individual Indian.

Annual Trust Evaluations

§ 1000.314 What is a trust evaluation?

A trust evaluation is an annual review and evaluation of trust functions performed by a tribe/consortium to ensure that the functions are performed in accordance with trust standards as defined by federal law. Trust evaluations address trust functions performed by the tribe/consortium on its own behalf as well as trust functions performed by the tribe/consortium for the benefit of individual Indians or Alaska Natives.

§ 1000.315 How are trust evaluations conducted?

(a) Each year the Secretary's designated representative(s) will conduct trust evaluations for each self-governance AFA. The Secretary's designated representative(s) will coordinate with the designated tribe's/consortium's representative(s) throughout the review process, including the written report required by § 1000.324.

(b) This section describes the general framework for trust reviews. However, each tribe/consortium may develop, with the appropriate bureau, an individualized trust evaluation process to allow for the tribe's/consortium's unique history and circumstances and

the terms and conditions of its AFA. An individualized trust evaluation process must, at a minimum, contain the measures in paragraph (e) of this section.

(c) To facilitate the review process so as to mitigate costs and maximize efficiency, each tribe/consortium must provide access to all records, plans, and other pertinent documents relevant to the program(s) under review not otherwise available to the Department.

(d) The Secretary's designated representative(s) will:

(1) Review trust transactions;

(2) Conduct on-site inspections of trust resources, as appropriate;

(3) Review compliance with applicable statutory and regulatory requirements;

(4) Review compliance with the provisions of the AFA;

(5) Ensure that the same level of trust services is provided to individual Indians as would have been provided by the Secretary;

(6) Ensure the fulfillment of the Secretary's trust responsibility to tribes and individual Indians by documenting the existence of:

(i) Systems of internal controls;

(ii) Trust standards; and

(iii) Safeguards against conflicts of interest in the performance of trust functions;

(7) Document deficiencies in the performance of trust function discovered during the review process.

(e) At the request of a tribe/consortium, at the time the AFA is negotiated, the standards will be negotiated, except where standards are otherwise provided for by law.

§ 1000.316 May the trust evaluation process be used for additional reviews?

Yes, if the parties agree.

§ 1000.317 Can an initial review of the status of the trust asset be conducted?

If the parties agree and it is practical, the status of the trust resource may be determined at the time of the transfer of the function or at a later time.

§ 1000.318 What are the responsibilities of the Secretary's designated representative(s) after the annual trust evaluation?

(a) The representative(s) must prepare a written report documenting the results of the trust evaluation.

(b) Upon tribal/consortium request, the representative(s) will provide the tribal/consortium representative(s) with a copy of the report for review and comment before finalization.

(c) The representative(s) will attach to the report any tribal/consortium comments that the representative does not accept.

§ 1000.319 Is the trust evaluation standard or process different when the trust asset is held in trust for an individual Indian or Indian allottee?

No. Tribes/consortia are under the same obligation as the Secretary to perform trust functions and related activities in accordance with trust protection standards and principles whether managing tribally or individually owned trust assets. The process for conducting annual trust evaluations of tribal performance of trust functions on behalf of individual Indians is the same as that used in evaluating performance of tribal trust functions.

§ 1000.320 Will the annual review include a review of the Secretary's residual trust functions?

Yes. If the annual evaluation reveals that deficient performance of a trust function is due to the action or inaction of a bureau, the evaluation report will note the deficiency and the appropriate Department official will be notified of the need for corrective action.

§ 1000.321 What are the consequences of a finding of imminent jeopardy in the annual trust evaluation?

(a) A finding of imminent jeopardy triggers the federal reassumption process (see subpart M of this part), unless the conditions in paragraph (b) of this section are met.

(b) The reassumption process will not be triggered if the Secretary's designated representative determines that the tribe/consortium:

(1) Can cure the conditions causing jeopardy within 60 days; and

(2) Will not cause significant loss, harm, or devaluation of a trust asset, natural resources, or the public health and safety.

§ 1000.322 What if the trust evaluation reveals problems which do not rise to the level of imminent jeopardy?

Where problems are caused by tribal action or inaction, the conditions must be:

(a) Documented in the annual trust evaluation report;

(b) Reported to the Secretary; and

(c) Reported in writing to:

(1) The governing body of the tribe; and

(2) In the case of a consortium, to the governing body of the tribe on whose behalf the consortium is performing the trust functions.

§ 1000.323 Who is responsible for corrective action?

The tribe/consortium is primarily responsible for identifying and implementing corrective actions, but the Department may also suggest possible corrective measures for tribal consideration.

§ 1000.324 What are the requirements of the review team report?

A report summarizing the results of the trust evaluation will be prepared and copies provided to the tribe/consortium. The report must:

(a) Be written objectively, concisely, and clearly; and

(b) Present information accurately and fairly, including only relevant and adequately supported information, findings, and conclusions.

§ 1000.325 Can the Department conduct more than one trust evaluation per tribe per year?

Trust evaluations are normally conducted annually. When the Department receives information of a threat of imminent jeopardy to a trust asset, natural resource, or the public health and safety, the Secretary, as trustee, may conduct a preliminary investigation. If the preliminary investigation shows that appropriate, sufficient data are present to indicate there may be imminent jeopardy, the Secretary's designated representative:

(a) Will notify the tribe/consortium in writing; and

(b) May conduct an on-site inspection upon 2 days' advance written notice to the tribe/consortium.

§ 1000.326 Will the Department evaluate a tribe/consortium's performance of non-trust related programs?

This depends on the terms contained in the AFA.

Subpart P—Reports

§ 1000.339 What is the purpose of this subpart?

This subpart describes what reports are developed under self-governance.

§ 1000.340 How is information about self-governance developed and reported?

Annually, the Secretary will compile a report on self-governance for submission to the Congress. The report will be based on:

(a) Audit reports routinely submitted by tribes/consortia;

(b) The number of retrocessions requested by tribes/consortia in the reporting year;

(c) The number of reassumptions that occurred in the reporting year;

(d) Federal reductions-in-force and reorganizations resulting from self-governance activity;

(e) The type of residual functions and amount of residual funding retained by BIA; and

(f) An annual report submitted to the Secretary by each tribe/consortium as described in § 1000.341.

§ 1000.341 What will the tribe/consortium's annual report on self-governance address?

(a) The report will address:

(1) A list of unmet tribal needs in order of priority;

(2) The approved, year-end tribal budget for the programs and services funded under self-governance, summarized and annotated as the tribe may deem appropriate;

(3) Identification of any reallocation of trust programs;

(4) Program and service delivery highlights, which may include a narrative of specific program redesign or other accomplishments or benefits attributed to self-governance; and

(5) At the tribe/consortium's option, a summary of the highlights of the report referred to in paragraph (a)(2) of this section and other pertinent information the tribes may wish to report.

(b) The report submitted under this section is intended to provide the Department with information necessary to meet its Congressional reporting responsibilities and to fulfill its responsibility as an advocate for self-governance. The tribal reporting requirement is not intended to be burdensome, and tribes are encouraged to design and present the report in a brief and concise manner.

Subpart Q—Miscellaneous Provisions

§ 1000.352 How can a tribe/consortium hire a federal employee to assist with the implementation of an annual funding agreement?

If a tribe/consortium chooses to hire a Federal employee, it can:

(a) Use its own tribal personnel hiring procedures. Federal employees are separated from federal service;

(b) ''Direct hire'' as a tribal employee. The employee will be separated from federal service and work for the tribe/consortium, but maintain a negotiated federal benefit package which is paid for by the tribe/consortium out of AFA program funds; or

(c) Negotiate an agreement under the Intergovernmental Personnel Act, 25 U.S.C. 48, or other applicable federal law.

§ 1000.353 Can a tribe/consortium employee be detailed to a federal service position?

Yes, under the Intergovernmental Personnel Act, 25 U.S.C. 48, or other applicable law, when permitted by the Secretary.

§ 1000.354 How does the Freedom of Information Act apply?

(a) Access to records maintained by the Secretary is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable federal law.

(b) At the option of the tribe/consortium pursuant to section 108 of Pub. L. 93–638, except for previously provided copies of tribe/consortium records that the Secretary demonstrates are clearly required to be maintained as part of the recordkeeping system of the Department of the Interior, records of the tribe/consortium shall not be considered federal records for the purpose of the Freedom of Information Act.

(c) The Freedom of Information Act does not apply to records maintained solely by tribes/consortia.

§ 1000.355 How does the Privacy Act apply?

At the option of the tribe/consortium, section 108(b) of Pub. L. 93–638, as amended, provides that records of the tribe/consortium must not be considered federal records for the purposes of the Privacy Act.

§ 1000.356 How will payments be made to self-governance tribes/tribal consortia?

Payments must be made in advance, as expeditiously as feasible in compliance with any applicable federal laws. At the option of the tribe/consortia, payments must be paid on an annual, semi-annual, or other basis.

§ 1000.357 What audit requirements must a self-governance tribe/consortium follow?

The tribe/consortium must provide to the designated official an annual single organization-wide audit as prescribed by the Single Audit Act of 1984, 31 U.S.C. 7501, *et seq.*

§ 1000.358 Do OMB circulars and revisions apply to self-governance funding agreements?

Yes. OMB circulars and revisions apply, except for:

(a) Listed exceptions for tribes and tribal consortia;

(b) Exceptions in 25 U.S.C. 450j–1(k); and

(c) Additional exceptions that OMB may grant.

§ 1000.359 Does a tribe/consortium have additional ongoing requirements to maintain minimum standards for tribe/consortium management systems?

Yes. The tribe/consortium must maintain systems and practices at least comparable to those in existence when the tribe/consortium entered the self-governance program.

§ 1000.360 Can a tribe/consortium retain savings from programs?

Yes. For BIA programs, the tribe/consortium may retain savings for each fiscal year during which an AFA is in effect. A tribe/consortium must use any savings that it realizes under an AFA, including a construction contract:

(a) To provide additional services or benefits under the AFA; or

(b) As carryover under § 1000.362.

§ 1000.361 Can a tribe/consortium carry over funds not spent during the term of the AFA?

For BIA programs, services, functions or activities, notwithstanding any other provision of law, any funds appropriated pursuant to the Snyder Act of 1921 (42 Stat. 208), for any fiscal year which are not obligated or expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation or expenditure during such succeeding fiscal year. In the case of amounts made available to a tribe/consortium under an annual funding agreement, if the funds are to be expended in the succeeding fiscal year for the purpose for which they were originally appropriated, contracted or granted, or for which they are or for which they are authorized to be used pursuant to the provisions of Section 106 (a)(3), no additional justification or documentation of such purposes need be provided by the tribe/consortium to the Secretary as a condition of receiving or expending such funds.

§ 1000.362 After a non-BIA annual funding agreement has been executed and the funds transferred to a tribe/consortium, can a bureau request the return of funds?

The bureau may request the return of funds only under the following circumstances:

(a) Retrocession;

(b) Reassumption;

(c) For construction, when there are special legal requirements; or

(d) As otherwise provided for in the AFA.

§ 1000.363 How can a person or group appeal a decision or contest an action related to a program operated by a tribe/consortium under an annual funding agreement?

(a) *BIA programs.* A person or group who is aggrieved by an action of a tribe/consortium with respect to programs that are provided by the tribe/consortium pursuant to an AFA must first exhaust tribal administrative due process rights. After that, the person or group may bring an appeal under 25 CFR part 2.

(b) *Non-BIA programs.* Procedures will vary depending on the program. Aggrieved parties should initially contact the local program administrator (the Indian program contact). Thereafter, appeals will follow the bureau's appeal procedures.

§ 1000.364 Must self-governance tribes/consortia comply with the Secretarial approval requirements of 25 U.S.C. 81 and 476 regarding professional and attorney contracts?

No. For the period that an agreement entered into under this part is in effect, the provisions of 25 U.S.C. 81 and 25 U.S.C. 476, do not apply to attorney and other professional contracts by participating tribes/consortia.

§ 1000.365 Can funds provided under a self-governance annual funding agreement be treated as non-Federal funds for the purpose of meeting matching requirements under any federal law?

Yes. Self-governance AFA funds are eligible to be treated as non-federal funding for the purpose of meeting matching requirements under federal law.

§ 1000.366 Will Indian preference in employment, contracting, and subcontracting apply to services, activities, programs, and functions performed under a self-governance annual funding agreement?

Tribal law must govern Indian preference in employment, where permissible, in contracting and subcontracting in performance of an AFA.

§ 1000.367 Do the wage and labor standards in the Davis-Bacon Act of March 3, 1931 (40 U.S.C., 276a–276a–f) (46 Stat. 1494), as amended and with respect to construction, alteration and repair, the Act of March 3, 1921, apply to tribes and tribal consortia?

No. Wage and labor standards do not apply to employees of tribes and tribal consortia. They do apply to all other laborers and mechanics employed by contractors and subcontractors in the construction, alteration, and repair (including painting or redecorating of buildings or other facilities) in connection with an AFA.

Appendix—A to Part 1000—Model Compact of Self-Governance Between the _____ Tribe and the Department of the Interior

Article I—Authority and Purpose

Section 1—Authority

This agreement, denoted a compact of Self-Governance (hereinafter referred to as the ''compact''), is entered into by the Secretary of the Interior (hereinafter referred to as the ''Secretary''), for and on behalf of the United States of America pursuant to the authority granted by Title IV of the Indian Self Determination and Education Assistance Act, Pub. L. 93–638, as amended, and by the tribe, pursuant to the authority of the Constitution and By-Laws of the tribe (hereinafter referred to as the ''tribe'')

Section 2—Purpose

This compact shall be liberally construed to achieve its purposes:

(a) This compact is to carry out Self-Governance as authorized by Title IV of Pub. L. 93–638, as amended, which built upon the Self Governance Demonstration Project, and transfer control to tribal governments, upon tribal request and through negotiation with the United States government, over funding and decision-making of certain federal programs as an effective way to implement the federal policy of government-to-government relations with Indian tribes.

(b) This compact is to enable the United States to maintain and improve its unique and continuing relationship with and responsibility to the tribe through tribal self-governance, so that the tribe may take its rightful place in the family of governments; remove federal obstacles to effective self-governance; reorganize tribal government programs and services; achieve efficiencies in service delivery; and provide a documented example for the development of future federal Indian policy. This policy of tribal self-governance shall permit an orderly transition from federal domination of Indian programs and services to allow Indian tribes meaningful authority to plan, conduct, and administer those programs and services to meet the needs of their people. In implementing Self-Governance, the Bureau of Indian Affairs is expected to provide the same level of service to other tribal governments and to demonstrate new policies and methods to improve service delivery and address tribal needs. In fulfilling its responsibilities under the compact, the Secretary hereby pledges that the Department will conduct all relations with the tribe on a government-to-government basis.

Article II—Terms, Provisions and Conditions

Section 1—Term

This compact shall be effective when signed by the Secretary or an authorized representative and the authorized representative of the tribe. The term of this compact shall commence [negotiated effective date] and must remain in effect as provided by federal law or agreement of the parties.

Section 2—Funding Amount

In accordance with Section 403(g) of Title IV of Pub. L. 93–638, as amended, and subject to the availability of appropriations, the Secretary shall provide to the tribe the total amount specified in each annual funding agreement.

Section 3—Reports to Congress

To implement Section 405 of Pub. L. 93–638, as amended, on each January 1 throughout the period of the compact, the Secretary shall make a written report to the Congress which shall include the views of the tribe concerning the matters encompassed by Section 405(b) and (d).

Section 4—Regulatory Authority

The tribe shall abide by all federal regulations as published in the **Federal Register** unless waived in accordance with Section 403(i)(2) of Pub. L. 93–638, as amended.

Section 5—Tribal Administrative Procedure

The tribe shall provide administrative due process rights pursuant to the Indian Civil Rights Act of 1968, 25 U.S.C. 1301, *et seq.*, to protect all rights and interests that Indians, or groups of Indians, may have with respect to services, activities, programs, and functions that are provided pursuant to the compact.

Article III—Obligations of the Tribe

Section 1—AFA Programs

The tribe will perform the programs as provided in the specific AFA negotiated pursuant to the Act. The tribe pledges to practice utmost good faith in upholding its responsibility to provide such programs, pursuant to the Act.

Section 2—Trust Services for Individual Indians

To the extent that the AFAs have provisions for trust services to individual Indians that were formerly provided by the Secretary, the tribe will maintain at least the same level of service as was previously provided by the Secretary. The tribe pledges to practice utmost good faith in upholding their responsibility to provide such service.

Article IV—Obligations of the United States

Section 1—Trust Responsibility

The United States reaffirms the trust responsibility of the United States to the _____ tribe(s) to protect and conserve the trust resources of the tribe(s) and the trust resources of individual Indians associated with this compact and any annual funding agreement negotiated under the Tribal Self-Governance Act.

Section 2—Trust Evaluations

Pursuant to Section 403(d) of Pub. L. 93–638, as amended, annual funding agreements negotiated between the Secretary and an Indian tribe shall include provisions to monitor the performance of trust functions by the tribe through the annual trust evaluation.

Article V—Other Provisions

Section 1—Facilitation

Nothing in this compact may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the tribe(s) or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility.

Section 2—Officials Not To Benefit

No Member of Congress, or resident commissioner, shall be admitted to any share or part of any annual funding agreement or contract thereunder executed pursuant to this

compact, or to any benefit that may arise from such compact. This paragraph may not be construed to apply to any contract with a third party entered into under an annual funding agreement pursuant to this compact if such contract is made with a corporation for the general benefit of the corporation.

Section 3—Covenant Against Contingent Fees

The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this compact upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

Section 4—Sovereign Immunity

Nothing in this compact or any AFA shall be construed as—

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by the tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

In witness whereof, the parties have executed, delivered and formed this compact, effective the _____ day of, _____ 19____.

THE _____ Tribe

The Department of the Interior.

By: _____

By: _____

[FR Doc. 98–3132 Filed 2–11–98; 8:45 am]

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Thursday
February 12, 1998

Part III

Environmental Protection Agency

40 CFR Parts 9, 35, 49, 50, and 81
Indian Tribes: Air Quality Planning and Management; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 35, 49, 50, and 81

[OAR–FRL–5964–2]

RIN 2060–AF79

Indian Tribes: Air Quality Planning and Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Clean Air Act (CAA) directs EPA to promulgate regulations specifying those provisions of the Act for which it is appropriate to treat Indian tribes in the same manner as states. For those provisions specified, a tribe may develop and implement one or more of its own air quality programs under the Act. This final rule sets forth the CAA provisions for which it is appropriate to treat Indian tribes in the same manner as states, establishes the requirements that Indian tribes must meet if they choose to seek such treatment, and provides for awards of federal financial assistance to tribes to address air quality problems.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: David R. LaRoche, Office of Air and Radiation (OAR 6102), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460 at (202) 260–7652.

SUPPLEMENTARY INFORMATION: Supporting information used in developing the final rule is contained in Docket No. A–93–3087. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m. Monday through Friday, at EPA's Air Docket, Room M–1500, Waterside Mall, 401 M Street SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

This preamble is organized according to the following outline:

I. Background of the Final Rule
II. Analysis of Major Issues Raised by Commenters
  A. Jurisdiction
  B. Sovereign Immunity and Citizen Suit
  C. Air Program Implementation in Indian Country
  D. CAA Sections 110(c)(1) and 502(d)(3) Authority
III. Significant Changes from the Proposed Regulations
IV. Miscellaneous
  A. Executive Order (EO) 12866
  B. Regulatory Flexibility Act (RFA)
  C. Executive Order (EO) 12875 and the Unfunded Mandates Reform Act (UMRA)
  D. Paperwork Reduction Act
  E. Submission to Congress and the General Accounting Office

I. Background of the Final Rule

Summary of Issues Raised by the Proposal

EPA proposed rules on August 25, 1994 (59 FR 43956) to implement section 301(d) of the Act. The proposal elicited many comments from state and tribal officials, private industry, and the general public. A total of 69 comments were received, of which 44 were from tribes or tribal representatives; 13 from state and local governments or associations; 10 from industry (primarily utilities and mining); and, 1 from Department of Energy (DOE) and 1 from an environmental interest group in Southern California. The tribes and several other commenters generally express support for the proposed rule and the delegation of CAA authority to eligible tribes to manage reservation air resources. Tribes especially urge EPA to expedite the finalization of this rule to enable tribes to begin to implement their air quality management programs and encourage EPA to recognize that the development of tribal air programs will be an evolving process requiring both time and significant assistance from EPA.

Most of the tribal commenters express concern with the inclusion of the citizen suit provisions which, they believed, effected a waiver of their sovereign immunity; they recommend that this provision be deleted in the final rule. This is a major issue for tribes. State and local government and industry commenters are primarily concerned that the proposed rule would create an unworkable scheme for implementing tribal air quality programs, and many of these commenters question the scope of tribal regulatory jurisdiction.

Responses to many of the comments related to issues of jurisdiction and sovereign immunity are included in sections II.A and II.B in the analysis of comments below. Responses to comments on the issues raised concerning federal implementation in Indian country are addressed in sections II.C and II.D of this document. All other comments are addressed in a document entitled ''response to comments'' that can be found in the docket for this rule cited above.

II. Analysis of Major Issues Raised by Commenters

A. Jurisdiction

1. Delegation of CAA Authority to Tribes

It is a settled point of law that Congress may, by statute, expressly delegate federal authority to a tribe. *United States* v. *Mazurie*, 419 U.S. 544, 554 (1975). *See also South Dakota* v. *Bourland*, 113 S. Ct. 2309, 2319–20 (1993); *Brendale* v. *Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408, 426–28 (1989) (White, J., for four Justice plurality). Such a delegation or grant of authority can provide a federal statutory source of tribal authority over designated areas, whether or not the tribe's inherent authority would extend to all such areas. In the August 25, 1994 proposed tribal authority rule, EPA set forth its interpretation that the CAA is a delegation of federal authority, to tribes approved by EPA to administer CAA programs in the same manner as states, over all air resources within the exterior boundaries of a reservation for such programs. Today, EPA is finalizing this approach. This grant of authority by Congress enables eligible tribes to address conduct relating to air quality on all lands, including non-Indian-owned fee lands, within the exterior boundaries of a reservation.

EPA's position that the CAA constitutes a statutory grant of jurisdictional authority to tribes is consistent with the language of the Act, which authorizes EPA to treat a tribe in the same manner as a state for the regulation of ''air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction.'' CAA section 301(d)(2)(B). EPA believes that this statutory provision, viewed within the overall framework of the CAA, establishes a territorial view of tribal jurisdiction and authorizes a tribal role for all air resources within the exterior boundaries of Indian reservations without distinguishing among various categories of on-reservation land. *See also* CAA sections 110(o), 164(c).

In light of the statutory language and the overall statutory scheme, EPA is exercising the rulemaking authority entrusted to it by Congress to implement the CAA provisions granting approved tribes authority over all air resources within the exterior boundaries of a reservation. *See generally Chevron U.S.A., Inc.* v. *NRDC*, 467 U.S. 837, 842–45 (1984). This interpretation of the CAA as generally delegating such authority to approved tribes is also supported by the legislative history, which provides additional evidence of Congressional intention regarding this issue. See S. Rep. No. 228, 101st Cong., 1st Sess. 79 (1989) (''the Act constitutes an express delegation of power to Indian tribes to administer and enforce the Clean Air Act in Indian lands'' (citation to *Brendale* omitted)) (hereinafter

referred to as ''Senate Report'').[1] EPA also believes this territorial approach to air quality regulation best advances rational, sound, air quality management.

(a) *Support for the delegation approach.* Tribal commenters and several industry commenters support EPA's interpretation that the CAA constitutes a delegation of Congressional authority to eligible tribes to implement CAA programs over their entire reservations. Numerous tribal commenters assert that EPA's territorial delegation approach is consistent with federal Indian law and the intent of Congress as expressed in several provisions of the CAA. Several tribal commenters note that, while tribes have inherent sovereign authority over all air resources within the exterior boundaries of their reservations, EPA should finalize the delegation approach to avoid case-by-case litigation concerning inherent authority and to eliminate the disruptive potential of a ''checkerboarded'' pattern of tribal and state jurisdiction on reservations. Several tribal commenters assert that the delegation approach is compelled by the language of the CAA and federal Indian law principles. One tribal commenter states that the delegation approach is consistent with the federal government's trust responsibility to federally-recognized Indian tribes.

(b) *Statutory Interpretation.* Several state commenters assert that the CAA does not constitute an ''express congressional delegation'' of authority to tribes as required by the Supreme Court's decisions in *Montana* v. *United States,* 450 U.S. 544 (1981) and *Brendale,* 492 U.S. 408. Several state and industry commenters dispute EPA's interpretation of CAA section 301(d)(2)(B), which states that EPA may treat a tribe in the same manner as a state if, among other things, ''the functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction.'' One commenter asserts that the ''or'' in ''or other areas within the tribe's jurisdiction'' means that treatment of a state is authorized for a tribe as to air resources over which the tribe has jurisdiction, whether or not those areas fall within its reservation boundaries. In other words, tribes would not necessarily have jurisdiction over all sources within reservation boundaries. The commenter states that EPA has improperly read the ''or'' in section 301(d)(2)(B) as an ''and.''

EPA believes the plain meaning of section 301(d)(2)(B) is that a tribe can implement a CAA program for air resources if: (1) the air resources are within a reservation; or (2) the air resources are within a non-reservation area over which the tribe can demonstrate jurisdiction. The most plausible reading of the phrase ''within * * * the reservation or other areas within the tribe's jurisdiction'' is that Congress intended to grant to an eligible tribe jurisdiction over its reservation without requiring the tribe to demonstrate its own jurisdiction, but to require a tribe to demonstrate jurisdiction over any other areas, i.e., non-reservation areas, over which it seeks to implement a CAA program. Under section 301(d)(2)(B), eligible tribes may be treated in the same manner as states for protecting ''air resources'' within ''the reservation'' or in ''other areas within the tribe's jurisdiction.'' Both the term ''reservation'' and the phrase ''other areas within the tribe's jurisdiction'' modify the phrase ''air resources.'' In addition, it is clear from the structure of the provision and the CAA and legislative history taken as a whole that the phrase ''within the tribe's jurisdiction'' modifies the phrase ''other areas'' and not the term ''reservation'' or the phrase ''air resources.'' If Congress intended to require tribes to demonstrate jurisdiction over reservations, Congress would have simply stated that EPA may approve a tribal program only for air resources over which the tribe can demonstrate jurisdiction.[2]

One commenter states that EPA's interpretation of CAA section 301(d)(2)(B) has made CAA section 301(d)(4), which allows EPA to administer provisions of the Act directly if treatment of a tribe as identical to a state is found to be ''inappropriate or administratively infeasible,'' extraneous. The commenter asserts that if CAA section 301(d)(2)(B) is a delegation of authority to a tribe, EPA would never have cause to find treatment of a tribe as a state ''inappropriate or administratively infeasible.'' EPA disagrees that its interpretation has made section 301(d)(2)(B) superfluous because, even with the delegation of federal authority to tribes for reservation areas, it is not appropriate or administratively feasible to treat tribes as states for all purposes. In such cases, section 301(d)(4) allows EPA, through rulemaking, to ''directly administer such provisions [of the Act] so as to achieve the appropriate purpose'' either by tailoring the provisions to tribes or conducting a federal program.

An industry commenter states that CAA section 110(o), which provides that when a tribal implementation plan (TIP) becomes effective under CAA section 301(d) ''the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation * * *,'' does not support EPA's interpretation of the CAA as a delegation because section 110(o) is only applicable to plans EPA approved pursuant to regulations under section 301(d).

EPA believes that section 110(o) recognizes that approved tribes are authorized to exercise authority over all areas within the exterior boundaries of a reservation for the purposes of TIPs. EPA notes that the commenter omitted the following remaining language in the quoted sentence from CAA section 110(o): ''located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.'' EPA believes that this additional language makes clear that TIPs may apply to all areas within the exterior boundaries of reservations. EPA believes that the phrase ''except as expressly provided otherwise in the plan'' refers to a situation where a tribe seeks to have its TIP apply only to specific areas within a reservation.

An industry commenter states that the CAA does not depart from other Congressional provisions regarding ''treatment as a state'' in the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) and EPA has already determined that these other statutes do not constitute a delegation of authority to tribes. EPA notes that the CAA ''treatment as a state'' provision is notably different from the SDWA ''treatment as a state'' provision. *Compare* CAA § 301(d)(2) (''the functions to be exercised by the Indian

[1] Further, it is a well-established principle of statutory construction that statutes should be construed liberally in favor of Indians, with ambiguous provisions interpreted in ways that benefit tribes. *County of Yakima* v. *Confederated Tribes and Bands of the Yakima Indian Nation,* 112 S.Ct. 683, 693 (1992). In addition, statutes should be interpreted so as to comport with tribal sovereignty and the federal policy of encouraging tribal independence. *Ramah Navajo School Board, Inc.* v. *Bureau of Revenue of New Mexico,* 458 U.S. 832, 846 (1982).

[2] Contrary to the commenter's assertion, EPA does not interpret the ''or'' in this section as an ''and''. If the ''or'' were an ''and'', under section 301(d)(2) EPA would be authorized to approve a tribal program ''only if'' the functions to be exercised by the tribe pertain to air resources that are both within a reservation and within non-reservation areas over which the tribe can demonstrate jurisdiction. This interpretation is nonsensical. Moreover, nothing in the Act or legislative history suggests that Congress intended to limit so severely the universe of tribes eligible for CAA programs.

tribe [must] pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction'') *with* SDWA § 1451(b)(1)(B) (''the functions to be exercised by the Indian tribes [must be] within the area of the Tribal Government's jurisdiction''). In addition, although CWA section 518(e) and CAA section 301(d) both contain language regarding tribal programs over ''Indian reservations,'' EPA believes that the overall statutory scheme and legislative history of the CAA represent a clearer expression than that of the CWA that Congress intended to effectuate a delegation to tribes over reservations.[3] EPA notes that, except for the provisions in CWA section 518(e) and SDWA section 1451(b)(1)(B), the Water Acts do not otherwise indicate what areas are subject to tribal regulatory authority. By contrast, several provisions of the CAA expressly recognize that tribes may exercise CAA authority over all areas within the exterior boundaries of the reservation. See CAA sections 110(o) and 164(c).

One industry commenter states that EPA should make clear that the CAA does not supersede other laws that may define or limit the extent of tribal regulatory jurisdiction.[4] The commenter states that, given that the CAA does not supersede all other laws regarding tribal jurisdiction, EPA should follow a case-by-case approach for addressing jurisdiction within reservation boundaries. One state association notes that some states have statutory jurisdiction over non-Indian fee lands located on reservations and EPA does not address how conflicts between the CAA and these statutes will be addressed.

EPA believes that the CAA delegation of authority to eligible tribes over reservations represents a more recent expression of Congressional intent and will generally supersede other federal statutes. See *Adkins* v. *Arnold,* 235 U.S. 417, 420 (1914) (noting that ''later in time'' statutes should take precedence). There may be, however, rare instances where special circumstances may preclude EPA from approving a tribal program over a reservation area. For example, in rare cases, there may be another federal statute granting a state exclusive jurisdiction over a reservation area that may not be overridden by the CAA. There may also be cases where a current tribal constitution may limit tribal exercise of authority.[5]

EPA will consider on a case-by-case basis whether special circumstances exist that would prevent a tribe from implementing a CAA program over its reservation. Appropriate governmental entities will have an opportunity to raise these unique issues on a case-by-case basis during EPA's review of a tribal application. Where tribes are aware of such issues, they should bring the issues to EPA's attention by including them in the tribe's ''descriptive statement of the Indian tribe's authority to regulate air quality'' under 40 CFR 49.7(a)(3). If EPA determines that there are special circumstances that would preclude the Agency from approving a tribal program over a reservation area, the Regional Administrator would limit the tribal approval accordingly under 40 CFR 49.9(e) and (g).

(c) *Legislative History.* Several industry and local government commenters assert that the legislative history does not support EPA's interpretation of the CAA as a delegation. They state that Senate Report No. 101–228, pp. 78–79, 1990 U.S. Code Cong. & Admin. News at 3464–65 (Senate Report) evidences Congress' intent that the CAA authorizes tribal programs in the same manner as had been authorized under the CWA and SDWA, both of which EPA has interpreted to authorize tribal programs only in areas over which a tribe can demonstrate inherent jurisdiction. The commenter also states that the Senate Report made clear that treatment as a state is only authorized for areas within a tribe's jurisdiction. In addition, one commenter states that Congress in 1990 knew how similar provisions of the CWA and SDWA had been interpreted and ''Congress can normally be presumed to have had knowledge of the interpretation given to the incorporated law. * * *'' citing *St. Regis Mohawk Tribe, New York* v. *Brock,* 769 F.2d 37, 50 (2nd Cir. 1985). One commenter further argues that the Senate Report refers to *Brendale,* which requires a case-by-case approach to tribal inherent jurisdiction.

EPA acknowledges that the summary of the treatment as a state provisions in the Senate Report contains a general statement suggesting that tribes are to demonstrate jurisdiction for all areas for which they seek a program, including reservation areas. However, the summary is followed by a detailed discussion that makes clear that Congress intended to provide an express delegation of power to Indian tribes for all reservation areas and to require a jurisdictional showing only for non-reservation areas. Senate Report at 79.

In addition, the Senate Report cited *Brendale* for the proposition that Congress may delegate federal authority to tribes. Moreover, although *Brendale* does support a case-by-case approach to evaluating tribal inherent authority over non-members of the tribe, EPA notes that the Senate Report cites the section of the *Brendale* opinion (pages 3006–07) in which Justice White recognizes that Congress may expressly delegate to a tribe authority over non-members. See *Brendale,* 109 S.Ct. 2994, 3006–07 (1989). EPA believes that this statement in the Senate Report further supports EPA's view that the CAA was intended to be a delegation. EPA also notes that in 1989, when the Senate Report was written, EPA had not yet finalized its interpretation that Congress, in the CWA, did not clearly intend a delegation to tribes. See 56 FR 64876, 64880–881 (December 12, 1991); *see also Montana* v. *EPA,* 941 F. Supp. 945, 951, 957 n.10 & n.12 (noting that the CWA may be read as a delegation of CWA authority to tribes over reservations). Thus, read as a whole, the Senate Report supports EPA's interpretation that the CAA is a delegation.

(d) *Limitations on Congressional delegations of authority.* Several state and municipal commenters state that *Montana, Brendale,* and *Bourland* establish that tribes generally do not have authority to regulate the activities of nonmembers on nonmember-owned fee lands. Several commenters also assert that tribes generally will not have inherent authority over sources of air pollution on non-Indian owned fee lands within a reservation. As discussed in detail in the preamble to the

[3] EPA also notes that a federal district court has stated that CWA section 518(e) may be read as an express delegation of authority to tribes over all reservation water resources. *Montana* v. *U.S. EPA,* 941 F. Supp. 945, 951, 957 n.10 & n.12 (D. Mont. 1996) citing *Brendale,* 492 U.S. at 428 (White, J.). In the preamble to its 1991 CWA regulation, EPA found the statutory language and legislative history of the CWA too inconclusive for the Agency to rely on the delegation theory, but noted that ''the question of whether section 518(e) is an explicit delegation of authority over non-Indians is not resolved.'' 56 FR 64876, 64880–881 (December 12, 1991).

[4] This commenter also asserts that the *Chevron* doctrine does not support EPA's interpretation that the CAA settles all jurisdictional issues on lands within reservations. While EPA believes that the CAA represents a clear delegation of authority to eligible tribes over reservation resources, EPA notes that, to the extent the statute is ambiguous, EPA's interpretation would be entitled to deference. In addition, the Agency has broad expertise in reconciling federal environmental and Indian policies. *Washington Department of Ecology,* 752 F.2d 1465, 1469 (9th Cir. 1985).

[5] Among other things, the commenter questions whether pre-existing treaties or binding agreements may limit the extent of regulatory jurisdiction. EPA believes that the CAA generally would supersede pre-existing treaties or binding agreements that may limit the scope of tribal authority over reservations.

proposed rule (59 FR 43958 *et seq.*), EPA believes that tribes generally will have inherent authority over air pollution sources on fee lands. 59 FR at 43958 n.5; *see also Montana* v. *EPA,* 941 F.Supp. 945 (D. Mont. 1996)(upholding EPA's determination that the Confederated Salish and Kootenai Tribes possess inherent authority over nonmember activities on fee lands for purposes of establishing water quality standards under the CWA). Nonetheless, because the Agency is interpreting the CAA as an explicit delegation of federal authority to eligible tribes, it is not necessary for EPA to determine whether tribes have inherent authority over all sources of air pollution on their reservations.

Several commenters state that only delegations over lands and activities subject to inherent tribal power are permissible. One commenter states that the proposed rule should be modified to require tribes to establish preexisting authority for on-reservation CAA programs, at least with regard to fee lands held by nonmembers within reservations. Two commenters, one citing the United States Constitution and the other citing *U.S.* v. *Morgan,* 614 F.2d 166 (8th Cir. 1980), also assert that a tribe cannot have delegated authority over nonmembers on fee lands living in a non-Indian community within a reservation. A state commenter asserts that these two factors, i.e., whether a tribe possesses inherent authority and whether the delegation is over nonmembers living on fee lands within a non-Indian community, were factors considered by the Supreme Court in *Mazurie* in evaluating whether Congress had validly delegated federal authority to tribes to regulate the introduction of alcoholic beverages into Indian country.

EPA believes that Indian tribes have sufficient independent authority to assume a Congressional delegation of authority to implement CAA programs. The Supreme Court in *Mazurie* acknowledged that Indian tribes have sovereignty over ''both their members and their territory.'' 419 U.S. at 557. As discussed above, EPA believes that tribes generally will have inherent authority to regulate sources of air pollution on nonmember-owned fee lands within reservations as well. However, EPA notes that the Court in *Mazurie* held that it is not necessary for a tribe to have independent authority over all matters that would be subject to the delegated authority; rather ''[i]t is necessary only to state that the independent tribal authority is quite sufficient to protect Congress' decision to vest in tribal councils this portion of its own authority 'to regulate Commerce * * * with the Indian tribes.' '' 419 U.S. at 557 (citation omitted).

In addition, while the Court in *Mazurie* noted that Constitutional limits on the authority of Congress to delegate its legislative power are ''less stringent in cases where the entity exercising the delegated authority itself possesses independent authority over the subject matter,'' the Court did not say that some independent source of authority was an absolute prerequisite for a Congressional delegation. 419 U.S. at 556-57.[6] Even in a case where a particular tribe's inherent authority is markedly limited, the detailed parameters outlined in the CAA and EPA's oversight role over tribal exercise of authority delegated by the CAA are sufficient to ensure that Constitutional limitations on the delegated authority have not been exceeded.

Furthermore, EPA disagrees with the commenter's assertion that the United States Constitution and federal court precedent prohibit Congress from delegating authority to a tribe over nonmembers on fee land living in a non-Indian community within a reservation. *See City of Timber Lake* v. *Cheyenne River Sioux Tribe,* 10 F.3d 554 (8th Cir. 1993), *reh'g en banc denied,* 1994 U.S. App. Lexis 501 (1994), *cert denied,* 512 U.S. 1236 (1994); *see also Rice* v. *Rehner,* 463 U.S. 713, 715 (1983) (noting that Congress, in 18 U.S.C. 1161, delegated to tribes authority to regulate liquor throughout Indian country, including in non-Indian communities). The discussion in *Morgan* and *Mazurie* about ''non-Indian communities'' was centered around the specific language of 18 U.S.C. sections 1154 and 1156 regarding introduction of alcoholic beverages into Indian country, and is not relevant to an interpretation of the CAA. In addition, EPA notes that the Eighth Circuit Court of Appeals, in *City of Timber Lake,* 10 F.3d 554, declined to follow its prior decision in *Morgan,* and concluded that 18 U.S.C. section 1161 delegated authority to tribes to regulate liquor in all of Indian country, including non-Indian communities.

One industry commenter asserts that, if EPA finalizes its position that Congress has delegated federal authority to tribes, EPA should state explicitly in its rule that the Bill of Rights and other federal protections for regulated entities apply to tribal air programs. EPA notes that the Indian Civil Rights Act imposes on tribal governments restrictions similar to those contained in the Bill of Rights and the Fourteenth Amendment, including the prohibitions against the denial of due process and equal protection, and the taking of private property without just compensation. 25 U.S.C. 1302; *Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49, 57 (1978). These protections extend to all persons subject to tribal jurisdiction, whether Indians or non-Indians. *Iowa Mutual Insurance Co.* v. *LaPlante,* 480 U.S. 9, 19 (1987). EPA believes that whether or not the Bill of Rights applies to tribes implementing the CAA on reservations is an issue for the courts to decide when and if the issue arises in a particular case. *See Mazurie,* 419 U.S. at 558 n. 12.

(e) *Use of the word ''reservation.''* Several tribal commenters supported EPA's proposal to construe the term ''reservation'' to include trust land that has been validly set apart for use by a tribe, even though that land has not been formally designated as a ''reservation.'' *See* 59 FR at 43960; 56 FR at 64881; *see also Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma,* 111 S.Ct. 905, 910 (1991). Some tribal commenters suggested that the definition of ''reservation'' in proposed § 49.2 be broadened specifically to include ''trust land that has been validly set apart for use by a Tribe, even though the land has not been formally designated as a reservation.''

A state commenter states that EPA has not provided an analysis of relevant provisions in the CAA to support its proposition that the term ''reservation'' includes ''trust land that has been validly set apart for the use of a Tribe.'' In addition, this commenter questions EPA's reliance on *Oklahoma Tax Comm'n* because that case deals with trust lands in Oklahoma and may not be universally applicable. Several commenters express concern that the phrase ''exterior boundaries of the reservation'' could encompass lands held in fee by nonmembers outside of areas formally designated as ''reservations.'' A state commenter suggests that EPA should require a case-by-case demonstration in cases where non-Indian-owned lands exist which may be surrounded by the exterior

[6] One industry commenter asserts that delegations of federal authority from Congress must ''clearly delineate'' policy and standards to be effective or valid, citing *American Power & Light Co.* v. *Securities and Exchange Commission,* 329 U.S. 90, 105 (1946). According to this commenter, EPA's proposed interpretation does not meet this standard. EPA agrees that the non-delegation doctrine does include a limitation on the devolution of legislative power under terms so vague as to be standardless, but that limitation has become a very low threshold, *see Mistretta* v. *United States,* 488 U.S. 361 (1989)(Scalia, J., dissenting); *Industrial Union Dep't* v. *American Petroleum Inst.,* 448 U.S. 607 (1980) (Rehnquist, J., concurring in the judgment), and is easily met by the CAA. The CAA provides detailed direction to tribes on the parameters under which CAA programs are to be implemented.

boundaries of a Pueblo. The commenter asserts that in these circumstances there is no evidence that the non-Indian lands were ''validly set apart for the use of the Indians as such, under the superintendence of the Government.'' The State of Oklahoma objects to EPA's use of the word ''reservation'' because, by federal law, the term ''reservation'' can include former reservations in Oklahoma, which include approximately the entire State. *See* 25 U.S.C. 1425. The State suggests that EPA should limit the term reservation to include only tribal trust land in Oklahoma; lands held in trust for individual Indians, Oklahoma asserts, should not be considered ''reservations.''

It is the Agency's position that the term ''reservation'' in CAA section 301(d)(2)(B) should be interpreted in light of Supreme Court case law, including *Oklahoma Tax Comm'n,* in which the Supreme Court held that a ''reservation,'' in addition to the common understanding of the term, also includes trust lands that have been validly set apart for the use of a tribe even though the land has not been formally designated as a reservation. In applying this precedent to construe the term ''reservation'' in the context of the CWA, the Agency has only recognized two categories of lands that, even though they are not formally designated as ''reservations,'' nonetheless qualify as ''reservations'': Pueblos and tribal trust lands. EPA will consider lands held in fee by nonmembers within a Pueblo to be part of a ''reservation'' under 40 CFR 49.6(c) and 49.7(a)(3). EPA will consider on a case-by-case basis whether other types of lands other than Pueblos and tribal trust lands may be considered ''reservations'' under federal Indian law even though they are not formally designated as such. Appropriate governmental entities will have an opportunity to comment on whether a particular area is a ''reservation'' during EPA's review of a tribal application. The Agency does not believe that additional, more specific language should be added to the regulatory definition of ''reservation,'' because the Agency's interpretation of the term ''reservation'' will depend on the particular status of the land in question and on the interpretation of relevant Supreme Court precedent.

A tribal consortium states that the proposed requirement in § 49.7(a)(3) that tribes ''must identify with clarity and precision the exterior boundaries of the reservation * * *'' precludes Alaska Native villages from applying for EPA-approved CAA programs. The full language of the proposed requirement in § 49.7(a)(3) is ''[f]or applications covering areas within the exterior boundaries of the applicant's Reservation the statement must identify with clarity and precision the exterior boundaries of the reservation * * * .'' If a tribe is seeking program approval for non-reservation areas, the tribe need not provide a reservation description. As noted below, EPA is finalizing its proposed position, under section 301(d)(2)(B), that an eligible tribe may implement its air quality programs in non-reservation areas provided the tribe can adequately demonstrate authority to regulate air quality in the non-reservation areas in question under general principles of Indian law. Thus, if an Alaska Native village can demonstrate authority to regulate air resources in non-reservation areas, the areas will be considered ''other areas within the tribe's jurisdiction'' under section 301(d)(2)(B) of the Act.

(f) *Policy Rationales.* Industry and municipal commenters state that it is improper for EPA to base its interpretation of the CAA regarding tribal jurisdiction on policy arguments seeking to avoid ''jurisdictional entanglements'' and checkerboarding. A state comments that given the intense controversy surrounding the issue of authority over the activities of nonmembers on fee lands, litigation is likely. The commenter states that litigation would cause long-term jurisdictional uncertainties, which will erode effective implementation of the Act, and that EPA should address and resolve jurisdictional issues in the reservation program planning stage. One industry commenter asserts that EPA's proposal to interpret the CAA as a delegation is inconsistent with EPA policy statements that EPA will authorize tribal programs only where tribes ''can demonstrate adequate jurisdiction over pollution sources throughout the jurisdiction.'' July 10, 1991 EPA/State/Tribal relations memorandum, signed by Administrator Reilly.

EPA's interpretation of the CAA is based on the language, structure, and intent of the statute. The Agency believes that Congress, in the CAA, chose to adopt a territorial approach to the protection of air resources within reservations—an approach that will have the effect of minimizing jurisdictional entanglements and checkerboarding within reservations. EPA expects that the delegation approach will minimize the number of case-specific jurisdictional disputes that will arise and enhance the effectiveness of CAA implementation. EPA notes that its interpretation of the CAA does not conflict with the Agency's general Indian policy statements regarding tribal jurisdiction. Under the CAA, EPA will not approve a tribe unless it has the authority to implement the program either by virtue of delegated federal authority over reservation areas, or a demonstration of authority under principles of federal Indian law over other areas on a case-by-case basis.

(g) *Current and historical application of state laws on parts of reservations.* State and industry commenters assert that states have historically regulated non-member CAA-related activities on fee lands within reservation boundaries and the proposal ignores this historical treatment and the transition issues it raises. The commenters suggest that EPA consider changing the proposed regulations to ''grandfather'' existing facilities subject to state authority, so that states continue to regulate those facilities until the affected parties all agree cooperatively to a transition from state to tribal jurisdiction. One commenter states that both the affected state and EPA would need to approve any necessary state implementation plan (SIP) revisions.

It is EPA's position that, unless a state has explicitly demonstrated its authority and been expressly approved by EPA to implement CAA programs in Indian country, EPA is the appropriate entity to be implementing CAA programs prior to tribal primacy. See preamble section II.C. and II.D. for a discussion of federal implementation of CAA programs in Indian country. EPA will not and cannot ''grandfather'' any state authority over Indian country where no explicit demonstration and approval of such authority has been made. EPA, as appropriate, will address any need for SIP revisions on a case-by-case basis.

2. Authority in Non-Reservation Areas Within a Tribe's Jurisdiction

CAA section 301(d)(2)(B) provides that a tribe may be treated in the same manner as a state for functions regarding air resources ''within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction'' (emphasis added). In the August 25, 1994 proposed tribal authority rule, EPA set forth its interpretation that this provision authorizes an eligible tribe to develop and implement tribal air quality programs in non-reservation areas that are determined to be within the tribe's jurisdiction. Today, EPA is finalizing this approach.

(a) *Support for EPA's approach.* Several tribal commenters support EPA's interpretation that ''other areas within the Tribe's jurisdiction'' in CAA section 301(d)(2)(B) means that a tribe

may implement its air quality programs in non-reservation areas under its jurisdiction, generally including all non-reservation areas of Indian country. One tribal commenter asserts that the ''Indian country'' standard is the standard consistently used by courts in determining a tribe's jurisdiction.

(b) Request for Clarification. Several commenters request that EPA clarify what is meant by the phrase ''other areas within a Tribe's jurisdiction.'' Some commenters state that this phrase must be clarified to avoid conflicts between states and tribes in interpreting their own jurisdiction and uncertainty for regulated sources. One commenter urges EPA to develop published criteria by which the Agency will decide whether a tribe may develop and implement a CAA program in areas outside the exterior boundaries of a reservation. Some commenters also request that EPA clarify what is meant by ''Indian country.''

EPA notes that the phrase ''other areas within the tribe's jurisdiction'' contained in CAA section 301(d)(2)(B) and 40 CFR 49.6 is meant to include all non-reservation areas over which a tribe can demonstrate authority, generally including all non-reservation areas of Indian country. As noted above, it is EPA's interpretation that Congress has not delegated authority to otherwise eligible tribes to implement CAA programs over non-reservation areas as it has done for reservation areas. Rather, a tribe seeking to implement a CAA program over non-reservation areas may do so only if it has authority over such areas under general principles of federal Indian law.

EPA notes that the definition of ''Indian country'' contained in 18 U.S.C. section 1151, while it appears in a criminal code, provides the general parameters under federal Indian law of the areas over which a tribe may have jurisdiction, including civil judicial and regulatory jurisdiction. *See DeCoteau* v. *District County Court*, 420 U.S. 425, 427 n. 2 (1975). EPA acknowledges that there may be controversy over whether a particular non-reservation area is within a tribe's jurisdiction. However, EPA believes that these questions should be addressed on a case-by-case basis in the context of particular tribal applications. EPA has established a process under section 49.9 for appropriate governmental entities to comment on assertions of authority in individual tribal applications. More discussion of the parameters of ''Indian country'' is provided in the detailed response to comment document.

Some tribal commenters object to EPA's description of the proposed requirement in § 49.7(a)(3)(ii) that, where a tribe seeks to have its program cover areas outside the boundaries of a reservation, the tribe must demonstrate its ''inherent authority'' over those areas. These commenters assert that the term ''inherent authority'' must be clarified because it may inappropriately limit the potential sources of tribal authority to regulate non-reservation air resources. EPA agrees that there may be cases where a tribe has authority to regulate a non-reservation area that derives from a federal statute or some other source of federal Indian law that is not based on ''inherent authority.'' Section 49.7(a)(3)(ii) only asks a tribe seeking to implement a CAA program in a non-reservation area to ''describe the basis for the tribe's assertion of authority * * *.'' Under this provision, a tribe may include any basis for its assertion of authority.

Some tribal commenters ask EPA to take the position that the phrase ''other areas within the tribe's jurisdiction'' means that tribes will have control over sources in close proximity to a reservation. One tribe comments that EPA has a trust responsibility to ensure that tribes have authority to control sources of air pollution outside of reservation boundaries that affect the health and welfare of tribal members living within reservation boundaries. One tribe asks whether non-reservation jurisdictional areas include ceded lands where tribes retain the right to hunt and fish.

As noted above, it is EPA's position that, while Congress delegated CAA authority to eligible tribes for reservation areas, the CAA authorizes a tribe to implement a program in non-reservation areas only if it can demonstrate authority over such areas under federal Indian law. Thus, a tribe may implement a CAA program over sources in non-reservation areas, including ceded territories, if the tribe can demonstrate its authority over such sources under federal Indian law. CAA provisions regarding cross-boundary impacts are the appropriate mechanisms for addressing cases where sources outside of tribal authority affect tribal health and environments. See, e.g., CAA sections 110(a)(2)(D), 126, and 164(e). The issue of cross-boundary impacts is discussed further in the response to comments document.

(c) *Comments challenging EPA's interpretation of the CAA.* Some commenters state that CAA section 110(o) limits the jurisdictional reach of a TIP to areas located within the boundaries of a reservation. One commenter asserts that since a tribe can only implement its TIP within a reservation, to allow a tribe to implement other parts of the CAA in non-reservation areas would be unmanageable and unreasonable.

EPA believes that the reference in CAA section 110(o) to ''reservation'' is simply a description of the type of area over which a TIP may apply. EPA does not believe the provision was intended to limit the scope of TIPs to reservations. CAA section 301(d)(1) authorizes EPA to treat a tribe in the same manner as a state for any provision of the Act (except with regard to appropriations under section 105) as long as the requirements in section 301(d)(2) are met. EPA has decided to include most of the provisions of section 110 in the group of provisions for which treatment of tribes in the same manner as a state is appropriate. Section 301(d)(2) permits EPA to approve eligible tribes to implement CAA programs, including TIPs, over non-reservation areas that are within a tribe's jurisdiction.

An industry commenter asserts that the Senate Report evidences that Congress intended to provide tribes the same opportunity to adopt programs as provided under the CWA and SDWA. This commenter asserts that tribal jurisdiction under those statutes is limited to reservations. EPA notes that the SDWA does not limit tribal programs to reservations. See 42 U.S.C. 300j–11(b)(1)(B) (authorizing a tribal role ''within the area of the Tribal Government's jurisdiction.''). EPA also notes that there is evidence in the Senate Report that Congress intended to authorize EPA to approve eligible tribes for CAA programs in non-reservation areas of Indian country that are within a tribe's jurisdiction. The report states that section 301(d) is designed ''to improve the environmental quality of the air wit[h]in Indian country in a manner consistent with EPA Indian Policy and 'the overall Federal position in support of Tribal self-government and the government-to-government relations between Federal and Tribal Governments' * * *.'' Senate Report at 79 (emphasis added) (citing EPA's 1984 Indian Policy); *see also, id.* at 80.

3. Other Jurisdictional Issues

Several local governments comment that the final rule should ensure that tribes with very small reservations do not have authority under an air program to adversely affect economic development in adjacent areas, intrude upon the jurisdiction of local governments, or create checkerboarded regulation. One commenter asserts that the proposal would allow for EPA approval of ''islands'' of Indian

programs and ''will create the same problems for states and local governments which EPA believes will be eliminated by granting tribes full regulatory power over all land within reservation borders.'' In addition, a state commenter states that extending tribal programs to non-reservation areas within the parameters of 18 U.S.C. section 1151 conflicts with EPA's goal under the CAA of increasing cohesive air quality management. Several commenters state that regulation by tribes with very small reservations or other very small areas of Indian country would be administratively impractical.

Several local governments state that a minimum size should be placed on areas to be considered for tribal jurisdiction. An industry commenter suggests that the final rule limit non-reservation tribal programs to those areas under tribal jurisdiction that are contiguous with reservations. Some local government commenters also state that EPA, instead of a tribe, should consider enforcing programs on small areas of Indian country.

EPA acknowledges that there may be cases where the Agency may approve a tribe's application to implement a CAA program over a relatively small land area. EPA also recognizes that approval of a tribal program over a small area that is surrounded by land covered by a state CAA program could lead to less uniform regulation. However, EPA believes it would be inappropriate to place a blanket limitation on the geographic size of an approvable tribal program. EPA notes that Congress, in the CAA, authorized the Agency to approve tribal CAA programs when a tribe meets the criteria contained in CAA section 301(d)(2)(B) without regard to size of area. In addition, it is long-standing federal Indian policy to support tribal self-government and a government-to-government relationship with federally recognized Indian tribes. See Senate Report at 79; April 29, 1994 Presidential Memorandum, ''Government-to-Government Relations with Native American Tribal Governments,'' 59 FR 22,951 (May 4, 1994). Furthermore, EPA policy favors tribal over federal implementation of environmental programs in areas under tribal jurisdiction. *See* 59 FR at 43962; November 8, 1984 ''EPA Policy for the Administration of Environmental Programs on Indian Reservations.'' EPA also recognizes that under the realities of federal Indian law, there are some small pockets of Indian country under tribal and federal jurisdiction that lie among lands under state jurisdiction. While EPA recognizes that its approval of tribal programs over small areas may result in less uniform regulation in some cases, the Agency believes that the approach to tribal jurisdiction outlined in this Tribal Authority Rule best reconciles federal Indian and environmental policies. See *Washington Department of Ecology*, 752 F.2d at 1469. The Agency's overall approach minimizes the potential for checkerboarded regulation within Indian reservations (see preamble at II.A.1.(a)), while promoting tribal sovereignty and self-determination.

One tribal commenter states that pollution from air sources outside a tribe's jurisdiction must be addressed. This commenter states that section 126 of the CAA, while designed to address this issue, is awkward and probably difficult to administer. In addition, local government commenters state that the off-site effect of approving tribal programs for Indian lands should be considered. One local commenter states that ''mutual protection for air quality goals, health values and customs should be assured for all within any physical air basin to the extent workable.''

EPA notes that several provisions of the CAA are designed to address cross-boundary air impacts. EPA is finalizing its proposed approach that the CAA protections against interstate pollutant transport apply with equal force to states and tribes. Thus, EPA is taking the position that the prohibitions and authority contained in sections 110(a)(2)(D) and 126 of the CAA apply to tribes in the same manner as states. As EPA noted in the preamble to its proposed rule, section 110(a)(2)(D), among other things, requires states to include provisions in their SIPs that prohibit any emissions activity within the state from significantly contributing to nonattainment, interfering with maintenance of the national ambient air quality standards (NAAQS), or interfering with measures under the Prevention of Significant Deterioration (PSD) or visibility protection programs in another state or tribal area. In addition, section 126 authorizes any state or tribe to petition EPA to enforce these prohibitions against a state containing an allegedly offending source or group of sources. The issue of cross-boundary impacts is discussed further in the response to comment document.

Several tribal commenters note that, in the preamble to the proposed rule, EPA misstated the dollar limitation contained in the Indian Civil Rights Act on criminal fines that may be imposed by tribes. EPA agrees that the dollar limitation in the Indian Civil Rights Act on criminal fines is $5,000 as opposed to $500.

B. Sovereign Immunity and Citizen Suit

1. Section 304

In its August 25, 1994 Notice of Proposed Rulemaking (NPR) EPA proposed, under the CAA's section 301(d) rulemaking authority, that the citizen suit provisions contained in section 304 of the Act should apply to tribes in the same manner in which they apply to states. See 59 FR at 43978. In today's final action, EPA is declining to announce a position, in the context of the rulemaking required under section 301(d) of the Act, regarding whether tribes are subject to the citizen suit provisions contained in section 304, and therefore is not finalizing the position stated in the NPR. In order to facilitate tribal adoption and implementation of air quality programs in a manner similar to state-implemented programs, section 301(d) requires EPA to specify through rulemaking those provisions of the Act which the Agency believes are appropriate to apply to tribes. EPA's rulemaking approach has been to deem all CAA provisions appropriate for tribes, except for those provisions specifically listed in the rule regarding which EPA, for various reasons, believes it may be inappropriate for the Agency, solely in the context of its 301(d) authority, to make such a determination. Thus, the direct consequence for today's final action of EPA's decision not to adopt the position presented in the NPR regarding the provisions of section 304 is that section 304 has been added to the list of those CAA provisions which, for section 301(d) purposes, EPA has concluded it is not appropriate to determine that tribes should be treated as states. That list is contained in section 49.4 of today's rule. EPA is also clarifying the relationship of this final action regarding section 304 to the right that tribes enjoy, as sovereign powers, to be immune from suit. See *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 58 (1978).

The Agency received a number of comments on the section 304 citizen suit issue. One group of industry commenters appears to be in favor of tribes being subject to citizen suits, and is particularly concerned that non-tribal members be provided with similar enforcement opportunities for TIPs as are required for SIPs. The majority of comments received on this issue came from tribal governments, mainly disputing EPA's claim that section 301(d), as a legal matter, provided EPA with the authority to apply the section 304 citizen suit provisions to tribes since doing so would appear to have the effect of administratively waiving tribal sovereign immunity. These commenters

argue that only the tribes themselves or Congress may waive tribal sovereign immunity and, further, that Congressional intent to waive tribal sovereign immunity may not be implied but must be express and unequivocal. They do not believe that the CAA, including section 301(d), contains such an express waiver. Several of the commenters also state that because states are subject to section 304 only ''to the extent permitted by the Eleventh Amendment to the Constitution,'' applying it to tribes would likely make the requirement more burdensome than it would be for states. Several tribal commenters also express the view that citizen suit recourse is unnecessary since EPA retains enforcement authority under various other CAA provisions, for example, sections 110(m), 179(a)(4), and 502(i). Finally, concern is expressed that adopting a policy of subjecting tribes to citizen suits could hinder development of tribal air programs because it could add significant resource constraints, financial and otherwise, particularly with respect to potential litigation.

Section 304 of the CAA reflects the general principle underlying all environmental citizen suit provisions, namely that actors who accept responsibility for regulating health-based standards and who voluntarily commit themselves to undertake control programs in furtherance of such goals, ought to be accountable to the citizens those programs are designed to benefit. However, EPA agrees, as several commenters pointed out, that section 304 only applies to states to the extent permitted by the Eleventh Amendment to the Constitution. The Supreme Court has interpreted the provisions of the Eleventh Amendment as generally serving to protect a state from liability to suit where the state does not consent to be sued. EPA believes that, just as states implementing air quality programs are not subject to citizen suits except to the extent permitted by the Eleventh Amendment of the Constitution and the provisions of the Clean Air Act, by analogy, in the context of air program implementation in Indian country, the issue of citizen suit liability would be determined based on established principles of tribal sovereign immunity and the provisions of the Clean Air Act. This is meant to emphasize that no EPA action in this final rule either enhances or limits the immunity from suit traditionally enjoyed by Indian tribes as sovereign powers.

Because the Eleventh Amendment does not apply to tribes (by its terms, the Eleventh Amendment only addresses suits brought ''against one of the United States''), and because the provisions of section 304 (and the applicable definitions in section 302) do not expressly refer to tribes, EPA has been concerned that the action it proposed to take may have subjected tribes to citizen suit liability in situations in which citizens could not sue states. Because of this uncertainty, EPA believes it is not appropriate to attempt to resolve this significant issue in the context of the limited scope of the rulemaking required under section 301(d).

EPA also notes that courts have long recognized that citizen plaintiffs may bring actions for prospective injunctive relief against state *officials* under the CAA section 304 citizen suit provisions, as well as under other environmental statutes with similar citizen suit provisions. *See Council of Commuter Organizations* v. *Metro. Transp.*, 683 F.2d 663, 672 (2nd Cir. 1982). *See also Seminole Tribe of Florida* v. *Florida*, 116 S. Ct. 1114, 1133 n.17 (1996) (acknowledging that lower courts have entertained suits against state officials pursuant to citizen suit provisions in environmental statutes substantially identical to CAA section 304(a)(1)). While this raises the question of whether such actions could be brought against ''tribal officials,'' EPA believes this issue is also outside the scope of this rulemaking.

2. Judicial Review Provisions of Title V

In its proposed rulemaking, EPA proposed to treat tribes in the exact same manner as states for purposes of the provisions of CAA sections 502(b)(6) and 502(b)(7) addressing judicial review under the Title V Operating Permits Program. 59 FR at 43972. For the reasons discussed below, in today's final action EPA is withdrawing its proposal to treat tribes in the exact same manner as states for purposes of these judicial review provisions. As described below, however, tribes that opt to establish a Title V program will still need to meet all requirements of sections 502(b)(6) and 502(b)(7) except those provisions that specify that review of final action under the Title V permitting program be ''judicial'' and ''in State court.''

As noted above in the discussion regarding the applicability of CAA section 304 to tribes, tribal commenters express concern over waivers of tribal sovereign immunity to judicial review. Several tribal commenters also note that requiring tribes to waive sovereign immunity in order to run a Title V program will be a strong disincentive for tribes to assume these programs. Two industry commenters state that nonmembers that are regulated by tribes must have access to tribal courts for judicial review. Several commenters express concern that some tribal governments may lack a distinct judicial system.[7]

EPA recognizes the importance of providing citizens the ability to hold accountable those responsible for regulating air resources. Nonetheless, EPA also acknowledges that applying the judicial review provisions of Title V to tribes through this rule would raise unique issues regarding federal Indian policy and law. EPA is mindful of the vital importance of sovereign immunity to tribes. In addition, EPA is aware that in some instances tribes do not have distinct judicial systems. Finally, EPA has long recognized the importance of encouraging tribal implementation of environmental programs and avoiding the establishment of unnecessary barriers to the development of such programs. *E.g.*, EPA's 1984 Indian Policy; *see also* Senate Report at 8419 (noting that section 301(d) is generally intended to be consistent with EPA's 1984 Indian Policy). EPA seeks to strike a balance among these various considerations. See *Washington Department of Ecology* v. *EPA*, 752 F.2d 1465, 1469 (9th Cir. 1985).

In order to ensure a meaningful opportunity for public participation in the permitting process, it is EPA's position that some form of citizen recourse be available for applicants and other persons affected by permits issued under tribal Title V programs. One option for review of final actions taken under a tribal Title V program is for tribes to consent to suit through voluntary waiver of their sovereign immunity in tribal court. EPA supports the continued development and strengthening of tribal courts and encourages those tribes that will implement Title V permitting programs to consent to challenges by permit applicants and other affected persons in tribal court. For the reasons discussed

[7] Two industry commenters stated that tribal courts ''lack many procedural, substantive law and constitutional protection[s] for non-members.'' EPA is aware that tribal governments are not subject to the requirements of the Bill of Rights and the Fourteenth Amendment of the U.S. Constitution, and that review of tribal court decisions in federal court may be limited. However, EPA notes that the Indian Civil Rights Act requires tribes to provide several protections similar to those contained in the Bill of Rights and the Fourteenth Amendment, including due process of law, equal protection of the laws, and the right not to have property taken without just compensation. 25 U.S.C. § 1302; *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 57 (1978). These protections extend to all persons subject to tribal jurisdiction, whether Indians or non-Indians. *See Iowa Mutual Insurance Co.* v. *LaPlante*, 480 U.S. 9, 19 (1987).

above, however, requiring tribes to provide for review in the exact same manner as states pursuant to section 502(b)(6) is not appropriate.

In some cases, well-qualified tribes seeking approval of Title V programs may not have a distinct judiciary, but rather may use non-judicial mechanisms for citizen recourse. *See Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49, 65–66 (1978) (''Non-judicial tribal institutions have * * * been recognized as competent law-applying bodies.''). In addition, a requirement that tribes waive their sovereign immunity to judicial review, in some cases, may discourage tribal assumption of Title V programs. Thus, EPA is willing to consider alternative options, developed and proposed by a tribe in the context of a tribal CAA Title V program submittal, that would not require tribes to waive their sovereign immunity to judicial review but, at the same time, would provide for an avenue for appeal of tribal government action or inaction to an independent review body and for injunctive-type relief to which the Tribe would agree to be bound.

EPA has consistently stressed the importance of judicial review under state Title V programs. *E.g., Virginia* v. *Browner,* 80 F.3d 869, 875 (4th Cir. 1996) (''EPA interprets the statute and regulation to require, at a minimum, that states provide judicial review of permitting decisions to any person who would have standing under Article III of the United States Constitution. Notice of Proposed Disapproval, 59 Fed. Reg. 31183, 31184 (June 17, 1994)''), *cert denied* 117 S.Ct. 764 (1997). However, the statutory scheme regarding tribal clean air programs is quite different from that of states. Section 301(d)(2) of the Act explicitly provides EPA with the discretion to ''specify * * * those provisions for which it is appropriate to treat Indian tribes as States.'' 42 U.S.C. 7601(d)(1). In addition, section 301(d)(4) of the Act states that where EPA ''determines that treatment of tribes as identical to states is inappropriate or administratively infeasible, [EPA] may provide, by regulation, other means by which [EPA] will directly administer such provisions so as to achieve the appropriate purpose.'' 42 U.S.C. 7610(d)(4). As EPA noted in the preamble to the proposed rule, tribes have a ''unique legal status and relationship to the Federal government that is significantly different from that of States. [C]ongress did not intend to alter this when it authorized treatment of Tribes 'as States' under the CAA.'' 59 FR at 43962, n.11.

In addition, there is ample precedent for treating tribes and states differently under federal Indian law. *E.g.,* U.S. Const. amend. XIV; Indian Civil Rights Act, 25 U.S.C. 1301 *et. seq.*; and *Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49 (1978). In *Santa Clara,* the Supreme Court addressed the availability of federal court review of tribal action under the Indian Civil Rights Act (ICRA), which requires tribal governments to provide several protections similar to those contained in the Bill of Rights and the Fourteenth Amendment. In finding that no additional federal court remedies beyond habeas corpus were provided by Congress for review of tribal compliance with the ICRA, the Court noted that Congress had struck a balance between the dual statutory objectives of enhancing individual rights without undue interference with tribal sovereignty. *Santa Clara,* 436 U.S. at 65–66. EPA has concluded that in enacting section 301(d) of the Act, Congress provided EPA with the discretion to balance the goals of ensuring meaningful opportunities for public participation under the CAA and avoiding undue interference with tribal sovereignty when determining those provisions for which it is appropriate to treat tribes in the same manner as states. *See Washington Department of Ecology* v. *EPA,* 752 F.2d 1465, 1469 (9th Cir. 1985) (''it is appropriate for us to defer to EPA's expertise and experience in reconciling [Indian policy and environmental policy], gained through administration of similar environmental statutes on Indian lands.'').

In addition to the requirement that tribal Title V programs provide some avenue for appeal of tribal government action or inaction and for injunctive-type relief, EPA may use several oversight mechanisms to ensure that tribal Title V programs provide adequate opportunities for citizen recourse. *E.g.,* CAA sections 502(i)(requiring EPA assumption of state or tribal Title V programs that EPA finds are not being adequately implemented or enforced), 505(b) (requiring EPA objection to state or tribal Title V permits that EPA finds do not meet applicable requirements).

Thus, under today's final rulemaking, EPA is not requiring tribes to provide for judicial review in the same manner as states under CAA section 502(b)(6). EPA will develop guidance in the future on acceptable alternatives to judicial review. In reviewing the Title V program submission of any tribe proposing an alternative to judicial review, EPA will apply such guidance to determine, pursuant to its section 301(d) authority, whether the tribe has provided for adequate citizen recourse consistent with the requirement in CAA section 502(b)(6) that there be review of final permit actions and the guidance and principles discussed above.

EPA emphasizes that tribes seeking to implement the Title V program will still need to meet all the requirements of CAA section 502(b)(6), except the requirements that review of final permit actions be ''judicial'' and ''in state court.'' Specifically, tribes seeking to implement the Title V program, will need to provide:

> [a]dequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for * * * review * * * of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

CAA section 502(b)(6). In addition, all provisions of CAA section 502(b)(7) will apply to tribal programs except the requirements that the review be ''judicial'' and in ''State court.''

C. Air Program Implementation in Indian Country

The August 25, 1994, proposed tribal authority rule set forth EPA's view that, based on the general purpose and scope of the CAA, the requirements of which apply nationally, and on the specific language of sections 301(a) and 301(d)(4), Congress intended to give to the Agency broad authority to protect tribal air resources. The proposal went on to state that EPA intended to use its authority under the CAA ''to protect air quality throughout Indian country'' by directly implementing the Act's requirements in instances where tribes choose not to develop a program, fail to adopt an adequate program or fail to adequately implement an air program.'' *Id.* at 43960. Comments on this issue were received from tribes, state and local government representatives, and industry.

The comments generally support the discussion of EPA's authority under the CAA to protect air quality throughout Indian country, but, overall, seek specific clarification with respect to the time frame and scope of federal implementation. In addition, several commenters, although focusing on different aspects of the issue, express a general concern that there be no diminution or interruption in tribal air resource protection while tribal programs are being developed. EPA

acknowledges the seriousness of the concerns identified by the commenters and agrees that a clearer presentation of the Agency's intentions is appropriate.

Most tribal commenters support establishing federal air programs under the circumstances outlined in the proposal, but many are concerned with the past lack of enforcement of environmental programs on tribal lands. Almost all commenters express concern with the lack of a definite timetable for federal initiation of air programs to protect tribal air resources and prevent gaps in protection. Tribal commenters generally support the provision in the proposal to develop an implementation strategy and a plan for reservation air program implementation; however, they request that EPA develop time frames and establish dates for developing the implementation strategy. A state commenter argues that the proposal did not sufficiently allow for state comment or input in the development of the implementation strategy, asserting that both state and tribal involvement will be necessary to avoid regulatory conflicts. A number of government and industry commenters suggest that EPA elaborate on the process for developing tribal air programs in light of the interrelationship between existing air programs and new tribal programs. Another commenter requests that EPA resolve the process for transition from existing programs to tribal programs as part of this rulemaking. One state comments that the transfer must be accomplished without leaving sources of air pollution and the states in air quality ''limbo'' pending development of either tribal or EPA programs to regulate sources under the jurisdiction of a tribe. Another state argues that if a tribe has no approved program and EPA has no reason for enforcement, section 116 preserves the state's inherent authority to regulate non-member sources on a reservation. One tribe asks that the process for transferring administration of an EPA-issued permit for a source on tribal lands to the tribe be made more explicit. Many tribal commenters request technical and administrative support in the form of guidance documents, training, sufficient financial resources, and EPA staff assigned to work with tribes on tribal CAA programs who are knowledgeable about tribal law and concerns. These commenters also express concern that limited resources might prevent EPA from providing this critical support.

As indicated above, EPA recognizes the seriousness of the concerns expressed in these comments and has undertaken an initiative to develop a comprehensive strategy for implementing the Clean Air Act in Indian country. The strategy will articulate specific steps the Agency will take to ensure that air quality problems in Indian country are addressed, either by EPA or by the tribes themselves. This strategy [a draft of which is available in the docket referenced above] addresses two major concerns: (1) Gaps in Federal regulatory programs that need to be filled in order for EPA to implement the CAA effectively in Indian country where tribes opt not to implement their own CAA programs; (2) identifying and providing resources, tools, and technical support that tribes will need to develop their own CAA programs.

EPA believes that the strategy being developed addresses many of the concerns expressed by the commenters. Once tribal programs are approved by EPA, tribes will have authority to regulate all sources within the exterior boundaries of the reservation under such programs. One of the most prevalent concerns is the status of sources (current and future) in Indian country not yet subject to the limits of an implementation plan. Commenters want assurance that EPA would step in to fill this gap and ensure adequate control. The Agency has consistently recognized the primary role for tribes in protecting air resources in Indian country and has expressed its continued commitment to work with tribes to protect these resources in the absence of approved tribal programs. The Agency has issued permits and undertaken the development of Federal Implementation Plans (FIP) to control sources locating in Indian country. For example, the Agency is working with both the Shoshone-Bannock and the Navajo Tribes to address pollution control of major sources on their Reservations. The Agency has also issued PSD preconstruction permits to new sources proposing to locate in Indian country. The Agency has started to explore options for promulgating new measures to ensure that EPA has a full range of programs and Federal regulatory mechanisms to implement the CAA in Indian country.

Since the 1994 proposal, EPA has tried specifically to identify the primary sources of air pollution emissions in Indian country, and evaluate the CAA statutory authorities for EPA to regulate those sources pending submission and approval of a TIP. EPA has determined that the CAA provides the Agency with very broad statutory authority to regulate sources of pollution in Indian country, but there are instances in which EPA has not yet promulgated regulations to implement its statutory authority.

One example is the absence of complete air permitting programs in Indian country. EPA has promulgated regulations establishing permit requirements for major sources in attainment areas, and issued Prevention of Significant Deterioration permits to new or modifying major sources. See 40 CFR 52.21. However, EPA has not promulgated regulations for a permitting program in Indian country for either minor or major sources of air pollution emissions in nonattainment areas. Therefore, EPA is currently drafting nationally applicable regulations for such minor and major source permitting programs. The permitting programs are expected to apply to construction or modification of all minor sources and to major sources in nonattainment areas. In addition, the planned permitting program would allow existing sources to voluntarily participate in the permitting program and accept enforceable permit limits. EPA regional offices would be the permitting authority for this program. With respect to Title V operating permits, EPA has proposed to include Indian country within the scope of 40 CFR Part 71. Therefore, the Part 71 regulations would apply to all major stationary sources of air pollution located in Indian country.

Many CAA requirements apply in Indian country without any further action by the EPA. For example, the standards and requirements of the Standards of Performance for New Sources, 42 U.S.C. 7411 and 40 CFR Part 60, apply to all sources in Indian country. Similarly, the National Emissions Standards for Hazardous Air Pollutants, 42 U.S.C. 7412 and 40 CFR Part 63 apply in Indian country.

EPA has, however, identified categories of sources of air pollution, such as open burning and fugitive dust, that are not covered by those regulations. For these categorical sources, EPA believes that it has the authority to promulgate regulations on a national basis that would apply until a TIP has been submitted and approved. EPA has also identified a number of general air quality rules, such as the prohibition against emitting greater than 20 percent opacity, which could be promulgated nationally for application in Indian country pending TIP approval.

EPA is optimistic that any additional regulations can be promulgated and implemented relatively quickly, since, along with the protections they would provide, such regulations can also serve as models which tribes can use in drafting TIPs.

EPA wishes to emphasize that the national rules it intends to promulgate will be analogous to, but not the same

in all respects, as the types of rules generally approved into State Implementation Plans. For example, EPA's federal rules are likely to represent an average program, potentially more stringent than some SIP rules and less stringent than others. However, by promulgating such rules, EPA would not be establishing, and should not be interpreted by States as setting, new minimal criteria or standards that would govern its approval of SIP rules. EPA encourages and will work closely with all tribes wishing to replace the future federal regulations with TIPS. EPA intends that its federal regulations will apply only in those situations in which a tribe does not have an approved TIP.

EPA will actively encourage tribes to provide assistance in the development of the proposed regulations referenced above to ensure that tribal considerations are addressed and development of the regulations will be subject to notice and comment rulemaking procedures.

The case-by-case nature of program implementation in Indian country makes it difficult to address concerns about plans and time lines. The Agency's strategy for implementing the CAA in Indian country proposes a multi-pronged approach, one prong of which is federal implementation described above. The other prongs derive from a ''grass-roots'' approach in which staff in the EPA regional offices work with individual tribes to assess the air quality problems and develop, in consultation with the tribes, either tribal or federal strategies for addressing the problems.

1. *Building Tribal Capacity.* An essential component of the Agency's CAA implementation strategy is to assess the extent to which tribes have developed an environmental protection infrastructure and determine how best to build tribal capacity to implement their own CAA programs. The assessment will be done in cooperation with the tribes and may include any or all of the following:

a. *Needs Assessment.* An initial step for effectively implementing the CAA in Indian country is to identify the air quality concerns and determine how well the tribes are able to address them. EPA will work with the tribes to develop emission inventories and air monitoring studies (where appropriate) to determine the nature of the problem and identify a range of potential control strategies. From this information, EPA and the tribes will jointly develop, as needed, tribal or federal implementation plans (TIPs/FIPs) to address the problem. These TIPs/FIPs may include, for example, controls on minor sources, categorical prohibitory rules, area source controls (e.g., vapor recovery, open burning ordinances).

b. *Communication.* A critical part of the Agency's strategy to build tribal capacity is outreach and communication. Outreach has already begun as EPA regional staff worked with tribes in their service area to draft the Strategy for Implementing the CAA in Indian Country. Outreach will continue with the promulgation of this rule; staff will meet with Tribes in regional meetings held throughout the country to talk about implementing the rule and answer questions. In follow-up to these initial meetings, EPA will adopt a multi-media approach to communicating with the Tribes and other stakeholders (conferences, conference calls, newsletters, Internet, etc.) to ensure timely access to information and guidance developed in support of this rule.

c. *Training.* The third component for building tribal capacity is training, providing in various forms and through various media the skills and knowledge needed to implement an air quality protection program in Indian country. EPA already supports a training program at Northern Arizona University (NAU) that offers basic introductory workshops on air quality program management and administration and a more in-depth course in air pollution control technology. This program, offered at no cost to tribes, helps tribal environmental professionals develop competence in air quality management. The program also prepares these professionals for enrollment in more advanced courses in EPA's Air Pollution Training Institute (APTI). In addition to these formal training opportunities, EPA offers internships to college students interested in pursuing an environmental career and supports an outreach program in high schools in Indian country to encourage these students' interest in environmental protection careers. EPA plans to encourage other options for promoting tribal professional development, including peer-to-peer support, temporary assignments with other government (state, tribal, or federal) environmental programs, and cooperative agreements to provide technical assistance.

As these individual tribal assessments are completed, the information will be compiled in order to determine to what extent commonalities exist among the air quality problems that might be amenable to common solutions (e.g., Title V, minor sources, etc.). The Agency will work in concert to develop other common solutions, as needed. At the same time, EPA is developing guidance documents, templates, and model analyses to assist tribes in developing Tribal Air Programs.

Finally, EPA recognizes that air quality problems in Indian country do not exist in isolation and that often they are part of a broader spectrum of environmental problems, the solutions for which may be best developed through an integrated approach to environmental protection. EPA's Office of Air & Radiation will continue to work with other media offices to develop overall environmental assessments (through the Tribal/EPA Environmental Agreement process) for Indian country and develop integrated approaches where appropriate. One approach, for example, might be to focus on ways to simultaneously protect air quality, water quality, and other public health and environmental values through control strategies that reduce atmospheric deposition of air pollutants in Indian country.

D. CAA Sections 110(c)(1) and 502(d)(3) Authority

In the proposed tribal rule, EPA stated that it was not proposing to treat tribes in the same manner as states under its section 301(d) authority with respect to the specific provision in section 110(c)(1) that directs EPA to promulgate, ''within 2 years,'' a Federal Implementation Plan (FIP) after EPA finds that a state has failed to submit a required plan, or has submitted an incomplete plan, or within 2 years after EPA has disapproved all or a portion of a plan. 59 FR at 43965. The proposed exception applied only for that provision of section 110(c)(1) that sets a specified date by which EPA must issue a FIP. The proposal went on to state that ''EPA would continue to be subject to the basic requirement to issue a FIP for affected [tribal] areas within some reasonable time.'' In today's action, EPA is finalizing the general approach discussed in the proposal, but has altered the method for implementing that approach. Therefore, although the result that was intended by the proposal remains unchanged, after further review, EPA is modifying the regulatory procedure by which it achieves that result, and is also clarifying the statutory basis it is relying upon for doing so.

The proposed rule set forth EPA's view that one of the principal goals of the rulemaking required under section 301(d) is to allow tribes the flexibility to develop and administer their own CAA programs to as full an extent as possible, while at the same time ensuring that the health and safety of the public is

protected. However, since, among other things, tribal authority for establishing CAA programs was expressly addressed for the first time in the 1990 CAA Amendments, in comparison to states, tribes in general are in the early stages of developing air planning and implementation expertise. Accordingly, EPA determined that it would be infeasible and inappropriate to subject tribes to the mandatory submittal deadlines imposed by the Act on states, and to the related federal oversight mechanisms in the Act which are triggered when EPA makes a finding that states have failed to meet required deadlines or acts to disapprove a plan submittal. As the proposal noted, section 301(d)(2) provides for EPA to promulgate regulations specifying those provisions for which it is appropriate to treat tribes as states, but does not compel tribes to develop and seek approval of air programs. In other words, there is no date certain submittal requirement imposed by the Act for tribes as there is for states. Thus, since the FIP obligation under section 110(c)(1) is keyed to plan submission failures by states that are contemplated with respect to ''a required submission,'' and to plan disapprovals that have not been cured within a specified time frame, the discussion in the proposal regarding section 110(c)(1) was consistent with the approach summarized above. However, given that the statutory basis underlying section 110(c)(1) is either expressly inapplicable to tribal plans or is linked to submittal deadlines that the Agency is today determining are inappropriate or infeasible to apply to tribal plan submissions, that section as a whole—not merely the provision setting a specific date by which EPA must issue a FIP—should have been included on the list of proposed CAA provisions for which EPA would not treat tribes in the same manner as states.

Consequently, in this final action, EPA has added section 110(c)(1) in its entirety to the list of CAA provisions in the rule portion of this action (§ 49.4) for which EPA is not treating tribes in the same manner as states. However, by including the specific FIP obligation under section 110(c)(1) on the list in section 49.4 of this final rule, EPA is not relieved of its general obligation under the CAA to ensure the protection of air quality throughout the nation, including throughout Indian country. In the absence of an express statutory requirement, EPA may act to protect air quality pursuant to its ''gap-filling'' authority under the Act as a whole. See, *e.g.,* CAA section 301(a). Moreover, section 301(d)(4) provides EPA with discretionary authority, in cases where it has determined that treatment of tribes as identical to states is ''inappropriate or administratively infeasible,'' to provide for direct administration through other regulatory means. EPA is exercising this discretionary authority and has created a new section (§ 49.11) to this final rule which provides that the Agency will promulgate a FIP to protect tribal air quality within a reasonable time if tribal efforts do not result in adoption and approval of tribal plans or programs. Thus, EPA will continue to be subject to the basic requirement to issue a FIP for affected tribal areas within some reasonable time.

The proposal notice made clear that even while the Agency was proposing not to treat tribes as states for purposes of the specified date in section 110(c)(1), it was always EPA's intention to retain the requirement to issue a FIP, as necessary and appropriate, for affected tribal areas. The bases and rationale for that determination are thoroughly set forth in 59 FR 43956 (especially at pages 43964 through 43966) and remain the same. The only change between the proposal and this final notice regards the methodology used to achieve the intended result, i.e., using the Agency's section 301(d)(4) discretionary authority in conjunction with its general ''gap-filling'' CAA authority.

Similarly, EPA is taking final action on its proposal not to treat tribes in a manner similar to states for the provision of section 502(d)(3) which requires issuance by EPA, within two years of the statutory submittal deadline, of a federal operating permit program if EPA has not approved a state program. The Agency has proposed, pursuant to its section 301(d)(4) authority, to include in its final rule addressing federal implementation of operating permit programs in Indian country a commitment to implement such programs by a date certain in instances where a tribe chooses not to implement a program or does not receive EPA approval of a submitted program. 62 FR 13748. In light of this commitment, EPA does not believe it is necessary to retain the text in § 49.4(j) acknowledging its federal authority.

III. Significant Changes to the Proposed Regulations

A. Part 35—State and Local Assistance

Section 35.205 Maximum Federal Share and Section 35.220 Eligible Indian Tribe. In its proposed rule, EPA sought comment on the appropriate level of tribal cost share for a section 105 grant, from a minimum of five percent to a maximum of 40 percent. The proposal also asked for comments on the establishment of a phase-in period for tribes to meet whatever match is ultimately required for section 105 grants. Tribes universally comment that the level of matching funds should be kept to a minimum, i.e., five percent, if not waived altogether, especially during the early stages of developing an air quality program. One tribe asserts that Title V cannot be viewed as the solution to funding tribal air programs; other financial resources must also be made available. In addition, EPA notes that only a small number of tribes have applied for section 105 grants despite being eligible to receive such grants as air pollution control agencies under section 302(b)(5) and section 301(d)(5). EPA attributes much of the tribes' reluctance to apply for these grants to the match requirement of forty percent that has been applicable to all section 105 grants.

EPA agrees with the commenters that tribal resources generally are not adequate to warrant the level of match required of states and that equivalent resources are unlikely to become available in the foreseeable future. A high match requirement would likely discourage interested tribes from developing and implementing air programs. It is not appropriate to compare the resources available for the development of state programs to that of tribes because tribes often lack the resources or tax infrastructure available to states for meeting cost share requirements. Furthermore, a low match requirement, with a hardship waiver, is consistent with federal Indian policy which encourages the removal of obstacles to self-government and impediments to tribes implementing their own programs.

Accordingly, EPA has determined that it is inappropriate to treat tribes identically to states for the purpose of the match requirement of section 105 grants. Therefore, pursuant to its authority under section 301(d)(4), EPA will provide a maximum federal contribution of 95 percent for financial assistance under section 105 to those tribes eligible for treatment in the same manner as states for two years from the initial grant award. After the initial two-year period of 5 percent match, EPA will increase each tribe's minimum cost share to 10 percent, as long as EPA determines that the tribe meets certain objective and readily-available economic indicators that would provide an objective assessment of the tribe's ability to increase its share. Within eighteen months of the promulgation of

this rule, the Agency will, with public input, develop guidance setting forth the precise procedures for evaluating tribal economic circumstances and will identify those economic indicators (for example, tribal per capita income, tribal unemployment rates, etc.) that will be used to support its determinations.

The tribal match will not be waived unless the tribe can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the tribe are constrained to such an extent that fulfilling the match would impose undue hardship. This waiver provision is designed to be very rarely used. The Agency does not foresee any circumstances that would justify eliminating this waiver provision for those eligible tribes that are able to demonstrate that meeting the match requirement would result in undue financial hardship. This waiver provision is not available to tribes that establish eligibility for a section 105 grant pursuant to § 35.220(b).

The EPA will examine the experience of this program and other relevant information to determine appropriate long-term cost share rates within five years of the date of publication of this rule.

Finally, the definition of Indian Tribe in § 35.105 has been changed to make it consistent with the definition found in the CAA at section 302(r) and the definition in § 49.2.

B. Title V Operating Permits Program: Operational Flexibility

The Agency received comments that objected to the proposed rule's position that tribal part 70 programs would not be required to include the same operational flexibility provisions required of state part 70 programs. The proposal preamble suggested that the three operational flexibility provisions at 40 CFR 70.4(b)(12) would be optional for tribes as would 40 CFR 70.6(a)(8), 40 CFR 70.6(a)(10), and 40 CFR 70.6(a)(9). A brief description of each of these provisions follows.

The three operational flexibility provisions in § 70.4(b)(12) require permitting authorities to: (1) allow certain changes within a facility without requiring a permit revision; (2) allow for trading increases and decreases in emissions in the facility where the applicable implementation plan provides for such trading; and (3) allow trading of emissions increases and decreases in the facility for the purposes of complying with a federally-enforceable emissions cap that is established in the permit. These provisions implement section 502(b)(10) of the Act. EPA has proposed to modify these provisions, by deleting the first provision and making some technical clarifications to the third provision. See 60 FR 45529 (August 31, 1995).

Section 70.6(a)(8) requires as a standard condition that permits contain a provision stating that no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

Section 70.6(a)(10) requires a standard condition (upon request of the applicant) that allows for emissions trading at a source if the applicable requirement provides for trading without a case-by-case approval of each emission trade.

Section 70.6(a)(9) requires as a standard condition (upon request of the applicant and approval by the permitting authority) terms that describe reasonably anticipated operating scenarios.

Initially, EPA believed that the technical expertise required to implement operational flexibility provisions would make it too difficult for tribal programs to obtain EPA approval. Accordingly, the Agency proposed that, for purposes of these provisions, tribes would not be treated in the same manner as states. However, EPA now believes that a better approach would be to treat tribes in the same manner as states for purposes of these provisions, while providing sufficient technical assistance, if needed, to enable tribes to issue permits that meet these operational flexibility requirements. Such an approach will assure that sources will be provided maximum flexibility regardless of whether the permitting agency is a tribal or state agency. In addition, it will afford sources that are subject to tribal part 70 programs the benefit of streamlined provisions that have been proposed for part 70.

C. Section 49.4 Clean Air Act Provisions for Which Tribes Will Not Be Treated in the Same Manner as States

Based on the comments received regarding tribal sovereign immunity and citizen suits (see discussion at II.B), EPA is withdrawing its proposal to treat tribes as states for purposes of section 304 and the judicial review provisions of sections 502(b)(6) and 502(b)(7) of the Act and has revised § 49.4 accordingly.

D. Section 49.8 Provisions for Tribal Criminal Enforcement Authority

EPA is modifying the language under this provision to clarify the federal role in criminal enforcement of tribal programs. Where tribes are precluded by law from asserting criminal enforcement authority, the federal government will exercise criminal enforcement responsibility. To facilitate this process, the Criminal Investigation Division office located at the appropriate EPA regional office and the tribe will establish a procedure by which any duly authorized agency of the tribe (tribal environmental program, tribal police force, tribal rangers, tribal fish and wildlife agents, tribal natural resources office, etc.) shall provide timely and appropriate investigative leads to any agency of the federal government (EPA, U.S. Attorney, BIA, FBI, etc.) which has authority to enforce the criminal provisions of federal environmental statutes. This procedure will be incorporated into the Memorandum of Agreement between the tribe and EPA. Nothing in the agreement shall be construed to limit the exercise of criminal enforcement authority by the tribe under any circumstances where the tribe may possess such authority.

E. Section 49.9 EPA Review of Tribal Clean Air Act Applications

New Process for Determining Eligibility of Tribes for CAA Programs

Many state, local government and industry commenters suggest that the proposed 15-day review period provided by EPA to identify potential disputes regarding a tribal applicant's assertion of reservation boundaries and jurisdiction over non-reservation areas should be extended. Suggested changes to the proposed 15-day review period range from 30 to 120 days. Commenters cite the potential complexity of jurisdictional issues and the amount of time required to respond adequately, especially for non-reservation areas. These commenters also express concern that notice and an opportunity for comment regarding reservation boundaries and tribal jurisdiction over non-reservation areas is being limited to ''appropriate governmental entities.'' Industry commenters suggest that notice and opportunity for comment also be provided to the regulated community, as well as other interested parties (e.g., landowners whose property could potentially fall under tribal jurisdiction). In addition, one industry commenter states that such determinations should be viewed as rulemakings under the Administrative Procedures Act (APA) and, thus, subject to public notice and comment.

Consistent with the TAS process which EPA has historically implemented under the Clean Water

and Safe Drinking Water Acts, the preamble to EPA's proposed rule on tribal CAA programs stated that the CAA TAS process ''will provide States with an opportunity to notify EPA of boundary disputes and enable EPA to obtain relevant information as needed[.]'' 59 FR at 43963. The proposal also indicated that a principal concern in developing the eligibility process was to streamline the process to eliminate needless delay. *Id.* In proposing to limit the notice and comment provision to ''appropriate governmental entities'' and the period within which to respond to 15 days with the possibility of a one-time extension of another 15 days, EPA was generally affirming prior ''treatment as state'' (TAS) practice. EPA notes that neither the Water statutes nor the CAA mandates a specific process regarding TAS determinations, including jurisdiction. Under CAA section 301(d)(2)(B), EPA must evaluate whether a tribe has demonstrated that the air resource activities it seeks to regulate are either within a reservation area, or within a non-reservation area over which the tribe has jurisdiction. In doing so, the Agency has provided for notice and a limited opportunity for input respecting the existence of competing claims over tribes' reservation boundary assertions and assertions of jurisdiction over non-reservation areas to ''appropriate governmental entities,'' which the Agency has defined as states, tribes and other federal entities located contiguous to the tribe applying for eligibility. See generally, 56 FR 64876, 64884 (Dec. 12, 1991). This practice recognizes, in part, that to the extent genuine reservation boundary or non-reservation jurisdictional disputes exist, the assertion of such are an inherently government-to-government process. Nonetheless, EPA seeks to make its notification sufficiently prominent to inform local governmental entities, industry and the general public, and will consider relevant factual information from these sources as well, provided (for the reason given above) they are submitted through the identified ''appropriate governmental entities.'' In making determinations regarding eligibility in the context of the Water Acts, EPA has explained that the part of the process that involves notifying ''appropriate governmental entities'' and inviting them to review the tribal applicant's jurisdictional assertion is designed to be a fact-finding procedure to assist EPA in making these statutorily-prescribed determinations regarding the tribes' jurisdiction; it is not in any way to be understood as creating or approving a state or non-tribal oversight role for a statutory decision entrusted to EPA. For these reasons, EPA also disagrees with the industry commenter about the status of these decisions under the APA. Given that there is no particular process specified under EPA governing statutes for TAS eligibility determinations, they are in the nature of informal adjudications for APA purposes. As such, EPA does not believe there is a legal requirement for any additional process than what the Agency already provides. By contrast, EPA decisions regarding tribal authority to implement CAA programs generally are rulemaking actions involving public notice and comment in the **Federal Register**. The approach in the proposed CAA rule was intended to follow the above process, including its imposed limitations (such as a 15-day review period), to ensure that overall eligibility decisions should not be delayed unduly.

In today's rulemaking, EPA recognizes that the potential complexities of reservation boundary and non-reservation jurisdictional issues may require additional review time and is finalizing an initial notice and comment period of 30 days with the option for a one-time extension of 30 days for disputes over non-reservation areas, should the issues identified by the commenters warrant such extension. EPA agrees that in some cases issues regarding tribal jurisdiction over non-reservation areas may be complex and may require more extensive analysis. However, EPA believes that many jurisdictional claims will be non-controversial and will not elicit adverse comments. In these instances, a comment period in excess of 30 days is not warranted. If, however, the tribal claims involve non-reservation areas and require more extensive analysis, an extension to the comment period may be warranted. In all cases, comments from appropriate governmental entities must be offered in a timely manner, and must be limited to the tribe's jurisdictional assertion.

State and industry commenters question the appropriateness of the language in § 49.9 of the regulatory portion of the proposal which states that eligibility decisions regarding a tribe's jurisdiction will be made by EPA Regional Administrators, as it appears to imply that jurisdictional disputes will always be resolvable at the Agency level. EPA continues to believe that the Regional Administrators are the appropriate decision makers for tribal eligibility purposes, including jurisdictional assertions. However, the Agency does agree that the language, as written, may have been confusing. Consequently, EPA has modified the first sentence of § 49.9(e). As explained previously, EPA has been making eligibility decisions pursuant to the TAS process under other environmental statutes for some time now. The TAS process set forth in this rule, including the process for making tribal jurisdictional determinations, is consistent with the approach followed by EPA in related regulatory contexts. EPA notes again that it believes that many submissions regarding jurisdiction by tribes requesting eligibility determinations will be non-controversial.

This final rule allows tribes to submit simultaneously to EPA a request for an eligibility determination and a request for approval of a CAA program. In such circumstances, EPA will likely announce its decision with respect to eligibility and program approval in the same **Federal Register** notice, for purposes of administrative convenience. However, EPA does not intend this simultaneous decision process of itself to be interpreted as altering the Agency's view (described above) regarding APA applicability with respect to notice and review opportunities provided to appropriate governmental entities with respect to tribal reservation boundary and non-reservation jurisdictional assertions.

F. Section 49.11 Actions Under Section 301(d)(4) Authority

This section addresses the regulatory provisions being added to this rule pursuant to CAA section 301(d)(4). See discussion at Part II.D above.

IV. Miscellaneous

A. Executive Order (EO) 12866

Section 3(f) of EO 12866 defines ''significant regulatory action'' to mean any regulatory action that is likely to result in a rule that may:

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

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

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

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

This rule was determined to be a significant regulatory action. A draft of this rule was reviewed by the Office of Management and Budget (OMB) prior to publication because of anticipated public interest in this action including potential interest by Indian tribes and state/local governments.

EPA has placed the following information related to OMB's review of this proposed rule in the public docket referenced at the beginning of this notice:

(1) Materials provided to OMB in conjunction with OMB's review of this rule; and

(2) Materials that identify substantive changes made between the submittal of a draft rule to OMB and this notice, and that identify those changes that were made at the suggestion or recommendation of OMB.

B. Regulatory Flexibility Act (RFA)

Under the RFA, 5 U.S.C. 601–612, EPA must prepare, for rules subject to notice-and-comment rulemaking, initial and final Regulatory Flexibility Analyses describing the impact on small entities. The RFA defines small entities as follows:

—Small businesses. Any business which is independently owned and operated and is not dominant in its field as defined by Small Business Administration regulations under section 3 of the Small Business Act.

—Small governmental jurisdictions. Governments of cities, counties, towns, townships, villages, school districts or special districts, with a population of less than fifty thousand.

—Small organizations. Any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

However, the requirement of preparing such analyses is inapplicable if the Administrator certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The rule will not have a significant economic impact on a substantial number of small entities. Many Indian tribes may meet the definition of small governmental jurisdiction provided above. However, the rule does not place any mandates on Indian tribes. Rather, it authorizes Indian tribes at their own initiative to demonstrate their eligibility to be treated in the same manner as states under the Clean Air Act, to submit CAA programs for specified provisions and to request federal financial assistance as described elsewhere in this preamble. Further, the rule calls for the minimum information necessary to effectively evaluate tribal applications for eligibility, CAA program approval and federal financial assistance. Thus, EPA has attempted to minimize the burden for any tribe that chooses to participate in the programs provided in this rule.

The regulation will not have a significant impact on a substantial number of small businesses. Any additional economic impact on the public resulting from implementation of this regulation is expected to be negligible, since tribal regulation of these activities is limited to areas within reservations and non-reservation areas within tribal jurisdiction and, in any event, EPA has regulated or may regulate these activities in the absence of tribal CAA programs.

The regulation will not have a significant impact on a substantial number of small organizations for the same reasons that the regulation will not have a significant impact on a substantial number of small businesses.

Accordingly, I certify that this regulation will not have a significant economic impact on a number of small entities.

C. Executive Order (EO) 12875 and the Unfunded Mandates Reform Act

EO 12875 is intended to reduce the imposition of unfunded mandates upon state, local and tribal governments. To that end, it calls for federal agencies to refrain, to the extent feasible and permitted by law, from promulgating any regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless funds for complying with the mandate are provided by the federal government or the Agency first consults with affected state, local and tribal governments.

The issuance of this rule is required by statute. Section 301(d) of the CAA directs the Administrator to promulgate regulations specifying those provisions of the Act for which it is appropriate to treat Indian tribes as states. Moreover, this rule will not place mandates on Indian tribes. Rather, as discussed in section IV.B above, this rule authorizes or enables tribes to demonstrate their eligibility to be treated in the same manner as states under the Clean Air Act and to submit CAA programs for the provisions specified by the Administrator. Further, the rule also explains how tribes seeking to develop and submit CAA programs to EPA for approval may qualify for federal financial assistance.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, signed into law on March 22, 1995, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed or final rules with federal mandates, as defined by the UMRA, that may result in expenditures to state, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a ''Federal Mandate'' and because it does not impose annual costs of $100 million or more.

Today's rule contains no federal mandates for state, local or tribal governments or the private sector for two reasons. First, today's action does not impose any enforceable duties on any state, local or tribal governments or the private sector. Second, the Act also generally excludes from the definition of a ''federal mandate'' duties that arise from participation in a voluntary federal program. As discussed above and in Section IV.B., the rule that is being promulgated today merely authorizes eligible tribes to seek, at their own election, approval from EPA to implement CAA programs for the provisions specified by the Administrator. Moreover, EPA has regulated or may regulate these activities in the absence of Tribal CAA programs.

Even if today's rule did contain a federal mandate, this rule will not result in annual expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector. This rule only addresses CAA authorizations that pertain to tribal governments, not to state or local governments, and calls for tribal governments to submit the minimum information necessary to effectively evaluate applications for eligibility and CAA program approval. The rule also explains how tribes seeking to develop and submit CAA programs for approval may qualify for federal financial assistance and, thus, minimize any economic burden. Finally, any economic impact on the public resulting from implementation of this regulation is expected to be negligible, since tribal regulation of CAA activities is limited to reservation areas and non-reservation areas over which a tribe can demonstrate jurisdiction.

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

including tribal governments, section 203 of the UMRA requires EPA to develop a plan for informing and advising any small government. EPA consulted with tribal governments periodically throughout the development of the proposed rule, and met directly with tribal representatives at three major outreach meetings. Since issuance of the proposed rule, EPA also received extensive comments from, and has been in communication with, tribal governments regarding all aspects of this rule. The Agency is also committed to providing ongoing assistance to tribal governments seeking to develop and submit CAA programs for approval.

D. Paperwork Reduction Act

OMB has approved the information collection requirements pertaining to grants applications contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2030–0020.

This collection of information pertaining to the grants application process has an estimated reporting burden averaging 29 hours per response and an estimated annual record keeping burden averaging 3 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Office of Management and Budget has also approved the information collection requirements pertaining to an Indian tribe's application for eligibility to be treated in the same manner as a state or ''treatment as state'' as provided by this rule under the *Paperwork Reduction Act,* 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2060–0306. This rule provides that each tribe voluntarily choosing to apply for eligibility is to meet eligibility by demonstrating it: (1) Is a federally recognized tribe; (2) has a governing body carrying out substantial governmental duties and powers; and (3) is reasonably expected to be capable of carrying out the program for which it is seeking approval in a manner consistent with the CAA and applicable regulations. If a tribe is asserting jurisdiction over non-reservation areas, it must demonstrate that the legal and factual basis for its jurisdiction is consistent with applicable principles of federal Indian law.

This collection of information for treatment in the same manner as states to carry out the Clean Air Act has an estimated reporting burden of 20 annual responses, averaging 40 hours per response and an estimated annual record keeping burden averaging 800 hours. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added 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).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 35

Environmental protection, Air pollution control, Coastal zone, Grant programs—environmental protection, Grant programs—Indians, Hazardous waste, Indians, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 49

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

40 CFR Part 50

Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 3, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the Preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding a heading and entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Indian Tribes:	
Air Quality Planning and Management	
49.6	2060–0306
49.7	2060–0306
* * * * *	

PART 35—STATE AND LOCAL ASSISTANCE

3. The authority cite for part 35, subpart a, continues to read as follows:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); Secs. 106, 205(g), 205(j), 208, 319, 501(a), and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j–2, 300j–9 and 300j–11); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u) and 136w(a)).

4. Section 35.105 is amended by revising the definitions for ''Eligible Indian Tribe,'' ''Federal Indian Reservation,'' and the first definition for ''Indian Tribe,'' and by removing the second definition for ''Indian Tribe'' to read as follows:

§ 35.105 Definitions.

Eligible Indian Tribe means:

(1) For purposes of the Clean Water Act, any federally recognized Indian Tribe that meets the requirements set forth at 40 CFR 130.6(d); and

(2) For purposes of the Clean Air Act, any federally recognized Indian Tribe that meets the requirements set forth at § 35.220.

Federal Indian Reservation means for purposes of the Clean Water Act or the Clean Air Act, all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Indian Tribe means:

(1) Within the context of the Public Water System Supervision and Underground Water Source Protection grants, any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

(2) For purposes of the Clean Water Act, any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation.

(3) For purposes of the Clean Air Act, any Indian Tribe, band, nation, or other organized group or community, including any Alaskan Native Village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

5. Section 35.205 is amended by adding new paragraphs (c), (d), and (e) to read as follows:

§ 35.205 Maximum Federal share.

* * * * *

(c) For Indian Tribes establishing eligibility pursuant to § 35.220(a), the Regional Administrator may provide financial assistance in an amount up to 95 percent of the approved costs of planning, developing, establishing, or improving an air pollution control program, and up to 95 percent of the approved costs of maintaining that program. After two years from the date of each Tribe's initial grant award, the Regional Administrator will reduce the maximum federal share to 90 percent, as long as the Regional Administrator determines that the Tribe meets certain economic indicators that would provide an objective assessment of the Tribe's ability to increase its share. The EPA will examine the experience of this program and other relevant information to determine appropriate long-term cost share rates within five years of February 12, 1998. For Indian Tribes establishing eligibility pursuant to § 35.220(a), the Regional Administrator may increase the maximum federal share if the Tribe can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe are constrained to such an extent that fulfilling the match would impose undue hardship. This waiver provision is designed to be very rarely used.

(d) The Regional Administrator may provide financial assistance in an amount up to 95 percent of the approved costs of planning, developing, establishing, or approving an air pollution control program and up to 95 percent of the approved costs of maintaining that program to an intertribal agency of two or more Tribes that have established eligibility pursuant to § 35.220(a), which has substantial responsibility for carrying out an applicable implementation plan under section 110 of the Clean Air Act, when such intertribal agency is authorized by the governing bodies of those Tribes to apply for and receive financial assistance. After two years from the date of each intertribal agency's initial grant award, the Regional Administrator will reduce the maximum federal share to 90 percent, as long as the Regional Administrator determines that the tribal members of the intertribal agency meet certain economic indicators that would provide an objective assessment of the Tribes' ability to increase the non-federal share. For intertribal agencies made up of Indian Tribes establishing eligibility pursuant to § 35.220(a), which have substantial responsibility for carrying out an applicable implementation plan under section 110 of the Clean Air Act, the Regional Administrator may increase the maximum federal share if the intertribal agency can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the member Tribes are constrained to such an extent that fulfilling the match would impose undue hardship. This waiver provision is designed to be very rarely used.

(e) The Regional Administrator may provide financial assistance in an amount up to 60 percent of the approved costs of planning, developing, establishing, or improving an air pollution control program, and up to sixty percent of the approved costs of maintaining that program to Tribes that have not made a demonstration that they are eligible for treatment in the same manner as a state under 40 CFR 49.6, but are eligible for financial assistance under § 35.220(b).

6. Section 35.210 is amended by adding paragraph (c) to read as follows:

§ 35.210 Maintenance of effort.

* * * * *

(c) The requirements of paragraphs (a) and (b) of this section shall not apply to Indian Tribes that have established eligibility pursuant to § 35.220(a) and intertribal agencies made up of such Tribes.

7. Section 35.215 is revised to read as follows:

§ 35.215 Limitations.

(a) The Regional Administrator will not award section 105 funds to an interstate, intertribal or intermunicipal agency which does not provide assurance that it can develop a comprehensive plan for the air quality control region which includes representation of appropriate state, interstate, tribal, local, and international interests.

(b) The Regional Administrator will not award section 105 funds to a local, interstate, intermunicipal, or intertribal agency without consulting with the appropriate official designated by the Governor or Governors of the state or states affected or the appropriate official of any affected Indian Tribe or Tribes.

(c) The Regional Administrator will not disapprove an application for or terminate or annul an award of section 105 funds without prior notice and opportunity for a public hearing in the affected state or area within tribal jurisdiction or in one of the affected states or areas within tribal jurisdiction if several are affected.

8. Section 35.220 is added just before the center heading ''Water Pollution

Control (section 106)'' to read as follows:

§ 35.220 Eligible Indian Tribes.

The Regional Administrator may make Clean Air Act section 105 grants to Indian Tribes establishing eligibility under paragraph (a) of this section, without requiring the same cost share that would be required if such grants were made to states. Instead grants to eligible Tribes will include a tribal cost share of five percent for two years from the date of each Tribe's initial grant award. After two years, the Regional Administrator will increase the tribal cost share to ten percent, as long as the Regional Administrator determines that the Tribe meets certain economic indicators that would provide an objective assessment of the Tribe's ability to increase its cost share. Notwithstanding the above, the Regional Administrator may reduce the required cost share of grants to Tribes that establish eligibility under paragraph (a) of this section if the Tribe can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe are constrained to such an extent that fulfilling the match would impose undue hardship. This waiver provision is designed to be very rarely used.

(a) An Indian Tribe is eligible to receive financial assistance if it has demonstrated eligibility to be treated in the same manner as a state under 40 CFR 49.6.

(b) An Indian Tribe that has not made a demonstration under 40 CFR 49.6 is eligible for financial assistance under 42 U.S.C. 7405 and 7602(b)(5).

(c) The Administrator shall process a tribal application for financial assistance under this section in a timely manner.

9. Part 49 is added to read as follows:

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

Sec.

49.1 Program overview.
49.2 Definitions.
49.3 General Tribal Clean Air Act authority.
49.4 Clean Air Act provisions for which it is not appropriate to treat tribes in the same manner as states.
49.5 Tribal requests for additional Clean Air Act provisions for which it is not appropriate to treat tribes in the same manner as states.
49.6 Tribal eligibility requirements.
49.7 Request by an Indian tribe for eligibility determination and Clean Air Act program approval.
49.8 Provisions for tribal criminal enforcement authority.
49.9 EPA review of tribal Clean Air Act applications.
49.10 EPA review of state Clean Air Act programs.
49.11 Actions under section 301(d)(4) authority.

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

§ 49.1 Program overview.

(a) The regulations in this part identify those provisions of the Clean Air Act (Act) for which Indian tribes are or may be treated in the same manner as states. In general, these regulations authorize eligible tribes to have the same rights and responsibilities as states under the Clean Air Act and authorize EPA approval of tribal air quality programs meeting the applicable minimum requirements of the Act.

(b) Nothing in this part shall prevent an Indian tribe from establishing additional or more stringent air quality protection requirements not inconsistent with the Act.

§ 49.2 Definitions.

(a) *Clean Air Act* or *Act* means those statutory provisions in the United States Code at 42 U.S.C. 7401, *et seq.*

(b) *Federal Indian Reservation, Indian Reservation* or *Reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

(c) *Indian tribe* or *tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) *Indian Tribe Consortium* or *Tribal Consortium* means a group of two or more Indian tribes.

(e) *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

§ 49.3 General Tribal Clean Air Act authority.

Tribes meeting the eligibility criteria of § 49.6 shall be treated in the same manner as states with respect to all provisions of the Clean Air Act and implementing regulations, except for those provisions identified in § 49.4 and the regulations that implement those provisions.

§ 49.4 Clean Air Act provisions for which it is not appropriate to treat tribes in the same manner as states.

Tribes will not be treated as states with respect to the following provisions of the Clean Air Act and any implementing regulations thereunder:

(a) Specific plan submittal and implementation deadlines for NAAQS-related requirements, including but not limited to such deadlines in sections 110(a)(1), 172(a)(2), 182, 187, 189, and 191 of the Act.

(b) The specific deadlines associated with the review and revision of implementation plans related to major fuel burning sources in section 124 of the Act.

(c) The mandatory imposition of sanctions under section 179 of the Act because of a failure to submit an implementation plan or required plan element by a specific deadline, or the submittal of an incomplete or disapproved plan or element.

(d) The provisions of section 110(c)(1) of the Act.

(e) Specific visibility implementation plan submittal deadlines established under section 169A of the Act.

(f) Specific implementation plan submittal deadlines related to interstate commissions under sections 169B(e)(2), 184(b)(1) & (c)(5) of the Act. For eligible tribes participating as members of such commissions, the Administrator shall establish those submittal deadlines that are determined to be practicable or, as with other non-participating tribes in an affected transport region, provide for federal implementation of necessary measures.

(g) Any provisions of the Act requiring as a condition of program approval the demonstration of criminal enforcement authority or any provisions of the Act providing for the delegation of such criminal enforcement authority. Tribes seeking approval of a Clean Air Act program requiring such demonstration may receive program approval if they meet the requirements of § 49.8.

(h) The specific deadline for the submittal of operating permit programs in section 502(d)(1) of the Act.

(i) The mandatory imposition of sanctions under section 502(d)(2)(B) because of failure to submit an operating permit program or EPA disapproval of an operating permit program submittal in whole or part.

(j) The ''2 years after the date required for submission of such a program under paragraph (1)'' provision in section 502(d)(3) of the Act.

(k) Section 502(g) of the Act, which authorizes a limited interim approval of an operating permit program that

substantially meets the requirements of Title V, but is not fully approvable.

(l) The provisions of section 503(c) of the Act that direct permitting authorities to establish a phased schedule assuring that at least one-third of the permit applications submitted within the first full year after the effective date of an operating permit program (or a partial or interim program) will be acted on by the permitting authority over a period not to exceed three years after the effective date.

(m) The provisions of section 507(a) of the Act that specify a deadline for the submittal of plans for establishing a small business stationary source technical and environmental compliance assistance program.

(n) The provisions of section 507(e) of the Act that direct the establishment of a Compliance Advisory Panel.

(o) The provisions of section 304 of the Act that, read together with section 302(e) of the Act, authorize any person who provides the minimum required advance notice to bring certain civil actions in the federal district courts against states in their capacity as states.

(p) The provisions of section 502(b)(6) of the Act that require that review of a final permit action under the Title V permitting program be ''judicial'' and ''in State court,'' and the provisions of section 502(b)(7) of the Act that require that review of a failure on the part of the permitting authority to act on permit applications or renewals by the time periods specified in section 503 of the Act be ''judicial'' and ''in State court.''

(q) The provision of section 105(a)(1) that limits the maximum federal share for grants to pollution control agencies to three-fifths of the cost of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

§ 49.5 Tribal requests for additional Clean Air Act provisions for which it is not appropriate to treat tribes in the same manner as states.

Any tribe may request that the Administrator specify additional provisions of the Clean Air Act for which it would be inappropriate to treat tribes in general in the same manner as states. Such request should clearly identify the provisions at issue and should be accompanied with a statement explaining why it is inappropriate to treat tribes in the same manner as states with respect to such provisions.

§ 49.6 Tribal eligibility requirements.

Sections 301(d)(2) and 302(r), 42 U.S.C. 7601(d)(2) and 7602(r), authorize the Administrator to treat an Indian tribe in the same manner as a state for the Clean Air Act provisions identified in § 49.3 if the Indian tribe meets the following criteria:

(a) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(b) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(c) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(d) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations.

§ 49.7 Request by an Indian tribe for eligibility determination and Clean Air Act program approval.

(a) An Indian tribe may apply to the EPA Regional Administrator for a determination that it meets the eligibility requirements of § 49.6 for Clean Air Act program approval. The application shall concisely describe how the Indian tribe will meet each of the requirements of § 49.6 and should include the following information:

(1) A statement that the applicant is an Indian tribe recognized by the Secretary of the Interior.

(2) A descriptive statement demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area. This statement should:

(i) Describe the form of the tribal government;

(ii) Describe the types of government functions currently performed by the tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(iii) Identify the source of the tribal government's authority to carry out the governmental functions currently being performed.

(3) A descriptive statement of the Indian tribe's authority to regulate air quality. For applications covering areas within the exterior boundaries of the applicant's reservation the statement must identify with clarity and precision the exterior boundaries of the reservation including, for example, a map and a legal description of the area. For tribal applications covering areas outside the boundaries of a reservation the statement should include:

(i) A map or legal description of the area over which the application asserts authority; and

(ii) A statement by the applicant's legal counsel (or equivalent official) that describes the basis for the tribe's assertion of authority (including the nature or subject matter of the asserted regulatory authority) which may include a copy of documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions that support the tribe's assertion of authority.

(4) A narrative statement describing the capability of the applicant to administer effectively any Clean Air Act program for which the tribe is seeking approval. The narrative statement must demonstrate the applicant's capability consistent with the applicable provisions of the Clean Air Act and implementing regulations and, if requested by the Regional Administrator, may include:

(i) A description of the Indian tribe's previous management experience which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101, *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(ii) A list of existing environmental or public health programs administered by the tribal governing body and a copy of related tribal laws, policies, and regulations;

(iii) A description of the entity (or entities) that exercise the executive, legislative, and judicial functions of the tribal government;

(iv) A description of the existing, or proposed, agency of the Indian tribe that will assume primary responsibility for administering a Clean Air Act program (including a description of the relationship between the existing or proposed agency and its regulated entities);

(v) A description of the technical and administrative capabilities of the staff to administer and manage an effective air quality program or a plan which proposes how the tribe will acquire administrative and technical expertise. The plan should address how the tribe will obtain the funds to acquire the administrative and technical expertise.

(5) A tribe that is a member of a tribal consortium may rely on the expertise and resources of the consortium in demonstrating under paragraph (a)(4) of this section that the tribe is reasonably

expected to be capable of carrying out the functions to be exercised consistent with § 49.6(d). A tribe relying on a consortium in this manner must provide reasonable assurances that the tribe has responsibility for carrying out necessary functions in the event the consortium fails to.

(6) Where applicable Clean Air Act or implementing regulatory requirements mandate criminal enforcement authority, an application submitted by an Indian tribe may be approved if it meets the requirements of § 49.8.

(7) Additional information required by the EPA Regional Administrator which, in the judgment of the EPA Regional Administrator, is necessary to support an application.

(8) Where the applicant has previously received authorization for a Clean Air Act program or for any other EPA-administered program, the applicant need only identify the prior authorization and provide the required information which has not been submitted in the previous application.

(b) A tribe may simultaneously submit a request for an eligibility determination and a request for approval of a Clean Air Act program.

(c) A request for Clean Air Act program approval must meet any applicable Clean Air Act statutory and regulatory requirements. A program approval request may be comprised of only partial elements of a Clean Air Act program, provided that any such elements are reasonably severable, that is, not integrally related to program elements that are not included in the plan submittal, and are consistent with applicable statutory and regulatory requirements.

§ 49.8 Provisions for tribal criminal enforcement authority.

To the extent that an Indian tribe is precluded from asserting criminal enforcement authority, the federal government will exercise primary criminal enforcement responsibility. The tribe, with the EPA Region, shall develop a procedure by which the tribe will provide potential investigative leads to EPA and/or other appropriate federal agencies, as agreed to by the parties, in an appropriate and timely manner. This procedure shall encompass all circumstances in which the tribe is incapable of exercising applicable enforcement requirements as provided in § 49.7(a)(6). This agreement shall be incorporated into a Memorandum of Agreement with the EPA Region.

§ 49.9 EPA review of tribal Clean Air Act applications.

(a) The EPA Regional Administrator shall process a request of an Indian tribe submitted under § 49.7 in a timely manner. The EPA Regional Administrator shall promptly notify the Indian tribe of receipt of the application.

(b) Within 30 days of receipt of an Indian tribe's initial, complete application, the EPA Regional Administrator shall notify all appropriate governmental entities.

(1) For tribal applications addressing air resources within the exterior boundaries of the reservation, EPA's notification of other governmental entities shall specify the geographic boundaries of the reservation.

(2) For tribal applications addressing non-reservation areas, EPA's notification of other governmental entities shall include the substance and bases of the tribe's jurisdictional assertions.

(c) The governmental entities shall have 30 days to provide written comments to EPA's Regional Administrator regarding any dispute concerning the boundary of the reservation. Where a tribe has asserted jurisdiction over non-reservation areas, appropriate governmental entities may request a single 30-day extension to the general 30-day comment period.

(d) In all cases, comments must be timely, limited to the scope of the tribe's jurisdictional assertion, and clearly explain the substance, bases, and extent of any objections. If a tribe's assertion is subject to a conflicting claim, the EPA Regional Administrator may request additional information from the tribe and may consult with the Department of the Interior.

(e) The EPA Regional Administrator shall decide the jurisdictional scope of the tribe's program. If a conflicting claim cannot be promptly resolved, the EPA Regional Administrator may approve that portion of an application addressing all undisputed areas.

(f) A determination by the EPA Regional Administrator concerning the boundaries of a reservation or tribal jurisdiction over non-reservation areas shall apply to all future Clean Air Act applications from that tribe or tribal consortium and no further notice to governmental entities, as described in paragraph (b) of this section, shall be provided, unless the application presents different jurisdictional issues or significant new factual or legal information relevant to jurisdiction to the EPA Regional Administrator.

(g) If the EPA Regional Administrator determines that a tribe meets the requirements of § 49.6 for purposes of a Clean Air Act provision, the Indian tribe is eligible to be treated in the same manner as a state with respect to that provision, to the extent that the provision is identified in § 49.3. The eligibility will extend to all areas within the exterior boundaries of the tribe's reservation, as determined by the EPA Regional Administrator, and any other areas the EPA Regional Administrator has determined to be within the tribe's jurisdiction.

(h) Consistent with the exceptions listed in § 49.4, a tribal application containing a Clean Air Act program submittal will be reviewed by EPA in accordance with applicable statutory and regulatory criteria in a manner similar to the way EPA would review a similar state submittal.

(i) The EPA Regional Administrator shall return an incomplete or disapproved application to the tribe with a summary of the deficiencies.

§ 49.10 EPA review of state Clean Air Act programs.

A state Clean Air Act program submittal shall not be disapproved because of failure to address air resources within the exterior boundaries of an Indian Reservation or other areas within the jurisdiction of an Indian tribe.

§ 49.11 Actions under section 301(d)(4) authority.

Notwithstanding any determination made on the basis of authorities granted the Administrator under any other provision of this section, the Administrator, pursuant to the discretionary authority explicitly granted to the Administrator under sections 301(a) and 301(d)(4):

(a) Shall promulgate without unreasonable delay such federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 304(a) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan.

(b) May provide up to 95 percent of the cost of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. After two years from the date of each tribe's initial grant award, the maximum federal share will be reduced to 90 percent, as long as the Regional Administrator determines that the tribe meets certain economic indicators that would provide an

objective assessment of the tribe's ability to increase its share. The Regional Administrator may increase the maximum federal share to 100 percent if the tribe can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the tribe are constrained to such an extent that fulfilling the match would impose undue hardship.

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

10. The authority citation for part 50 is revised to read as follows:

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

11. Section 50.1 is amended by adding paragraph (i) to read as follows:

§ 50.1 Definitions.

* * * * *

(i) *Indian country* is as defined in 18 U.S.C. 1151.

12. Section 50.2 is amended by revising paragraphs (c) and (d) to read as follows:

§ 50.2 Scope.

* * * * *

(c) The promulgation of national primary and secondary ambient air quality standards shall not be considered in any manner to allow significant deterioration of existing air quality in any portion of any state or Indian country.

(d) The proposal, promulgation, or revision of national primary and secondary ambient air quality standards shall not prohibit any state or Indian tribe from establishing ambient air quality standards for that state or area under a tribal CAA program or any portion thereof which are more stringent than the national standards.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

13. The authority citation for part 81 is revised to read as follows:

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

14. Section 81.1 is amended by revising paragraph (a) and adding new paragraphs (c), (d) and (e) to read as follows:

§ 81.1 Definitions.

* * * * *

(a) *Act* means the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*).

* * * * *

(c) *Federal Indian Reservation, Indian Reservation or Reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

(d) *Indian tribe* or *tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) *State* means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

Subpart C—Section 107 Attainment Status Designations

15. The authority citation for subpart C, part 81 is revised to read as follows:

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

§ 81.300 [Amended]

16. Section 81.300(a) is amended by revising the third sentence to read ''A state, an Indian tribe determined eligible for such functions under 40 CFR part 49, and EPA can initiate changes to these designations, but any proposed state or tribal redesignation must be submitted to EPA for concurrence.''

[FR Doc. 98–3451 Filed 2–11–98; 8:45 am]

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Thursday
February 12, 1998

Part IV

The President

Executive Order 13074—Amendment to Executive Order 12656

Federal Register
Vol. 63, No. 29
Thursday, February 12, 1998

Presidential Documents

Title 3—

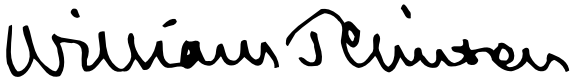
The President

Executive Order 13074 of February 9, 1998

Amendment to Executive Order 12656

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to reflect the appropriate allocation of funding responsibilities for Noncombatant Evacuation Operations, it is hereby ordered that Executive Order 12656 is amended by adding a new section 501(16) to read as follows:

> ''Subject to the direction of the President, and pursuant to procedures to be developed jointly by the Secretary of Defense and the Secretary of State, be responsible for the deployment and use of military forces for the protection of United States citizens and nationals and, in connection therewith, designated other persons or categories of persons, in support of their evacuation from threatened areas overseas.''



THE WHITE HOUSE,
February 9, 1998.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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