

Federal Register

**Monday
December 21, 1998**

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

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

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Presidential Documents

Title 3—**Presidential Determination No. 99-8 of December 8, 1998****The President****Assistance Program for the New Independent States of the Former Soviet Union****Memorandum for the Secretary of State**

Pursuant to Section 517(b) in Title V of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (Public Law 105-277), I hereby determine that it is in the national security interest of the United States to make available funds appropriated under the heading "Assistance for the New Independent States of the Former Soviet Union" in Title II of that Act without regard to the restriction in that section.

You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 8, 1998.

[FR Doc. 98-33867

Filed 12-18-98; 8:45 am]

Billing code 4710-10-M

Rules and Regulations

Federal Register

Vol. 63, No. 244

Monday, December 21, 1998

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

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

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1310

Listing of OMB Circulars

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Amendment to listing of OMB Circulars.

SUMMARY: The Office of Management and Budget (OMB) provides policy guidance to agencies through the issuance of OMB circulars. OMB is updating the list of circulars that are in effect.

DATES: Effective December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Steve Aitken, OMB Office of General Counsel, at (202) 395-5044.

SUPPLEMENTARY INFORMATION: In carrying out its responsibilities, the Office of Management and Budget issues policy guidance to Federal agencies to promote efficiency and uniformity in Government activities. This policy guidance is normally in the form of circulars.

In 1979, OMB published at 5 CFR Part 1310 a list of OMB circulars that were in effect as of July 1, 1979. OMB is updating the list of circulars in Part 1310, to reflect the issuance of additional circulars and the rescission of former circulars during the intervening years. See, e.g., 56 FR 49824 (October 1, 1991) (notice regarding rescission of 11 circulars). As indicated in the updated list, there are 29 circulars in effect as of December 1, 1998. In addition, Part 1310 has been updated to reflect the fact that OMB no longer uses "Federal Management Circulars."

List of Subjects in 5 CFR Part 1310

Government publications.

Robert G. Damus,
General Counsel.

5 CFR Part 1310 is revised to read as follows:

PART 1310—OMB CIRCULARS

Sec.

- 1310.1 Policy guidelines.
- 1310.3 Availability of circulars.
- 1310.5 List of current circulars.

Authority: 31 U.S.C. 501-06.

§ 1301.1 Policy guidelines.

In carrying out its responsibilities, the Office of Management and Budget issues policy guidelines to Federal agencies to promote efficiency and uniformity in Government activities. These guidelines are normally in the form of circulars.

§ 1310.3 Availability of circulars.

Copies of individual circulars are available at OMB's Internet home page; you may access them at <http://www.whitehouse.gov/WH/EOP/omb>. Copies are also available from the EOP Publications Office, 725 17th Street NW, Room 2200, Washington, D.C. 20503; (202) 395-7332. Selected circulars are also available through fax-on-demand, by calling (202) 395-9068.

§ 1310.5 List of current circulars.

The following list includes all circulars in effect as of December 1, 1998.

No. and Title

- A-1—"System of Circulars and Bulletins to Executive Departments and Establishments"
- A-11—"Preparation and Submission of Budget Estimates" (Part 1)
"Preparation and Submission of Strategic Plans and Annual Performance Plans" (Part 2)
"Planning, Budgeting, and Acquisition of Capital Assets" (Part 3)
"Capital Programming Guide" (Supplement to Part 3)
- A-16—"Coordination of Surveying, Mapping, and Related Spatial Data Activities"
- A-19—"Legislative Coordination and Clearance"
- A-21—"Cost Principles for Educational Institutions"

- A-25—"User Charges"
- A-34—"Instructions on Budget Execution"
- A-45—"Rental and Construction of Government Quarters"
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- A-87—"Cost Principles for State, Local, and Indian Tribal Governments"
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- A-94—"Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs"
- A-97—"Rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of government under Title III of the Intergovernmental Cooperation Act of 1968"
- A-102—"Grants and Cooperative Agreements With State and Local Governments"
- A-109—"Major System Acquisitions"
- A-110—"Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"
- A-119—"Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities"
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- A-135—"Management of Federal Advisory Committees"

[FR Doc. 98-33677 Filed 12-18-98; 8:45 am]

BILLING CODE 3110-01-P

DEPARTMENT OF AGRICULTURE**Federal Crop Insurance Corporation****7 CFR Part 400****General Administrative Regulations; Interpretations of Statutory and Regulatory Provisions**

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule with Emergency Agency Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations, by adding a new subpart X to implement the statutory mandates of section 533 of the Agricultural Research, Extension, and Education Reform Act of 1998 (1998 Research Act). The intended effect of this interim rule is to provide procedures for responding to requests for final agency interpretations regarding any provision of the Federal Crop Insurance Act (Act) or any regulation promulgated thereunder.

DATES: This rule is effective December 21, 1998. Written comments and opinions on this rule will be accepted until the close of business February 19, 1999 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to Marian Jenkins, Assistant Deputy Administrator for Regional Service Offices, Federal Crop Insurance Corporation, United States Department of Agriculture, Stop Code 0805, 1400 Independence Avenue, SW, Washington, D.C. 20250-0805. A copy of each response will be available for public inspection and copying from 8:00 a.m. to 4:30 p.m., EST, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Marian Jenkins, at the above stated address, telephone (202) 720-5290.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

In accordance with section 3507 (j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.), the information collection and recordkeeping requirements included in this interim

rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0563-____ to the information collection and recordkeeping requirements.

Notwithstanding any other provision of the law, no person is required to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection information displays a currently valid OMB Control Number. Please send your written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FCIC, Washington, DC 20503. Please state your comments refer to Subpart X—Interpretations of Statutory and Regulatory Provisions. Please send a copy of your comments to (1) USDA—RMA, 702 West Pitt Street, Suite 5, Bedford, PA 15522 and (2) Clearance Officer, OIRM, USDA, room 404-w, 14th Street and Independence Avenue SW., Washington, DC 20250.

The paperwork associated with the subpart x—Interpretations of Statutory and Regulatory Provisions will be a request for final agency determination under this subpart. We are soliciting comments from the public concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us accomplish the following:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission responses).

Title: Subpart X—Interpretations of Statutory and Regulatory Provisions.

OMB Number: 0563—New.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Insurance providers, trade associations, grower groups and agricultural producers.

Estimated Number of Respondents: 156.

Estimated Number of Responses per Respondent: 3.5.

Estimated Total Annual Burden on Respondents: 78.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will

preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The 1998 Research Act, enacted June 23, 1998, amended the Act to require FCIC to establish procedures under which FCIC will provide a final agency determination in response to an inquiry regarding the interpretation of any provision of the Act or any regulation promulgated thereunder. Since these procedures are required by statute, it is impractical and contrary to the public interest to publish this rule for notice and comment prior to making the rule effective. However, comments are solicited for 60 days after the date of publication in the **Federal Register** and will be considered by FCIC before this rule is made final.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure

Interim Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby adds a new subpart X to 7 CFR part 400 to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart X—Interpretations of Statutory and Regulatory Provisions

Sec.	
400.765	Basis and applicability.
400.766	Definitions.
400.767	Requester obligations.
400.768	FCIC obligations.

Authority: 7 U.S.C. 1506(l), 1506(p).

Subpart X—Interpretations of Statutory and Regulatory Provisions

§ 400.765 Basis and applicability.

(a) The regulations contained in this subpart prescribe the rules and criteria for obtaining a final agency determination of the interpretation of any provision of the Act or the regulations promulgated thereunder.

(b) This subpart is applicable to all regulations that were in effect for the 1995 and subsequent crop years.

(c) All final agency determinations issued by FCIC, and published in accordance with § 400.768(f), will be binding on all participants in the Federal crop insurance program.

§ 400.766 Definitions.

Act. The Federal Crop Insurance Act, 7 U.S.C. 1501 *et seq.*

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

Participant. Any applicant for crop insurance, a producer with a valid crop insurance policy, or a private insurance company with a reinsurance agreement with FCIC or their agents, loss adjusters, employees or contractors.

Regulations. All provisions contained in 7 CFR chapter IV.

§ 400.767 Requester obligations.

(a) All requests for a final agency determination under this subpart must:

(1) Be submitted, in writing by certified mail to the Associate Administrator, Risk Management Agency, United States Department of Agriculture, Stop Code 0801, 1400 Independence Avenue, SW, Washington, DC 20250-0801, 1400 Independence Avenue, SW, Washington, DC 20250-0801, faximile at (202) 690-5879 or by electronic mail at RMA533@wdc.fsa.usda.gov;

(2) State that it is being submitted under section 506(s) of the Act;

(3) Identify and quote the specific provision in the Act or regulations for which a final agency determination is requested;

(4) State the crop year for which the interpretation is sought;

(5) State the name, address, and telephone number of a contact person affiliated with the request; and

(6) Contain the requester's detailed interpretation of the regulation.

(b) The requestor must advise FCIC if the request for a final agency determination will be used in a lawsuit or the settlement of a claim.

(c) Each request for final agency determination under this subpart must contain no more than one request for an agency interpretation.

§ 400.768 FCIC obligations.

(a) FCIC will not interpret any specific factual situation or case, such as actions of any participant under the terms of a policy or any reinsurance agreement.

(b) If, in the sole judgement of FCIC, the request is unclear, ambiguous, or incomplete, FCIC will not provide an interpretation, but will notify the

requester that the request is unclear, ambiguous or incomplete, within 30 days of such request.

(c) FCIC will provide a final determination of the interpretation to a request that meets all the conditions stated herein to the requester in writing, and at FCIC's discretion in the format in which it was received, within 90 days of the date of receipt by FCIC.

(d) If a requestor is notified that a request is unclear, ambiguous or incomplete under section 400.768(b), the time to respond will be tolled from the date FCIC notifies the requestor until the date that FCIC receives a clear, complete, and unambiguous request.

(e) If a response is not provided within 90 days, the requestor may assume the interpretation provided is correct for the applicable crop year.

(f) All agency final determinations will be published by FCIC as specially numbered documents on the RMA Internet website.

(g) All final agency determinations are considered matters of general applicability that are not appealable to the National Appeals Division. Before obtaining judicial review of any final agency determination, the person must obtain an administratively final determination from the Director of the National Appeals division on the issue of whether the final agency determination is a matter of general applicability.

Signed in Washington, D.C., on December 15, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98-33746 Filed 12-16-98; 4:19 pm]

BILLING CODE 3410-08-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100, 101, 103, 204, 210, 211, 216, 245, 247, 264, 299, 316, 338, and 341

[INS No. 1896-97]

RIN 1115-AF01

Changing the Name of the Alien Registration Receipt Card to the Permanent Resident Card (Form I-551)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by revising the name of the Form I-551 from "Alien

Registration Receipt Card" to "Permanent Resident Card." Although known officially as the "Alien Registration receipt Card," Form I-551 identifies the permanent resident status of the cardholder and is often referred to as the "Permanent Resident Card." Renaming the card the "Permanent Resident Card" allows the Service to officially adopt the more accurate and convenient usage. To facilitate the name change, this final rule allows the Service to continue using both valid versions of the Form I-551 (titled "Alien Registration Receipt Card") while using and referring to the new generation of the Form I-551, the "Permanent Resident Card." This is a change in name only and will not alter any policy or procedures.

DATES: This final rule is effective January 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Program Analyst, Adjudications Division, Residence and Status, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514-2763.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1997, the Service began using the integrated Card production System (ICPS) to produce the Permanent Resident Card, previously known as the Alien Registration Receipt Card (ARC). As a result, there now are two acceptable Forms I-551 with different titles currently in use. Both of these forms with different titles will remain valid until the ARC cards expire or are replaced.

Why Change the Name?

The Service renamed the card for convenience and usage. The Service issues the Form I-551 card as evidence of the holding of status as a permanent resident by a qualified noncitizen. Although the Form I-551 is known officially as the "Alien Registration Receipt Card," it also is referred to as the "Permanent Resident Card." The Service renamed the card to conform to this more accurate usage.

How Will the 8 CFR be Changed?

This rule amends the 8 CFR by revising the term "Alien Registration Receipt Card" to read "Permanent Resident Card" where appropriate. This rule does not affect or invalidate currently valid versions of the Form I-551, nor does it make any changes in the application procedure for a new card. Until the ARCs are replaced or expire,

the term "Permanent Resident Card" will also mean "Alien Registration Receipt Card."

What is the Service's Justification for Publishing This as a Final Rule?

The Service's implementation of this rule as a final rule is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(A), (B) and (d)(3). The reason for this determination is that this rule pertains to an agency practice and does not affect either the application or adjudication procedures. It is administrative in nature and only changes the name of the Form I-551.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because this rule only changes the name of Form I-551 from "Alien Registration Receipt Card" to "Permanent Resident Card." Current cardholders do not need to replace their card with the new Form I-551 until their card expires. Moreover, all currently valid Form I-551 versions will continue to satisfy the requirement for a document under list "A" of the Employment Verification Eligibility Worksheet (Form I-9). This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12988 Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of powers and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

8 CFR Part 100

Organization of functions (government agencies).

8 CFR Part 101

Immigration.

8 CFR Part 103

Administrative practice and procedure, Authority delegations (government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 210

Aliens, Migrant labor, Reporting and recordkeeping requirements.

8 CFR Part 211

Immigration, Passports, and visas, Reporting and recordkeeping requirements.

8 CFR Part 216

Administrative practice and procedure, Aliens.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 247

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 264

Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

8 CFR Part 316

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 338

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 341

Citizenship and naturalization, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

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

Authority: 8 U.S.C. 1103; 8 CFR part 2.

§ 100.4 [Amended]

2. In § 100.4, paragraph (c)(2) introductory text is amended in the fifth sentence by revising the phrase "alien registration receipt cards" to read "Permanent Resident Cards".

PART 101—PRESUMPTION OF LAWFUL ADMISSION

3. The authority citation for part 101 continues to read as follows:

Authority: 8 U.S.C. 1103, 8 CFR part 2.

§ 101.4 [Amended]

4. Section 101.4 is amended by revising the phrase "an Alien Registration Receipt Card" to read "a Permanent Resident Card".

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

5. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356, 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.2 [Amended]

6. In § 103.2, paragraph (b)(17) is amended in the second sentence by revising the phrase "Alien Registration Receipt Cards" to read "Permanent Resident Cards".

§ 103.21 [Amended]

7. In § 103.21, paragraph (b)(1) is amended by revising the phrase "alien registration receipt card" to read "Permanent Resident Card".

PART 204—IMMIGRANT PETITIONS

8. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

§ 204.1 [Amended]

9. In § 204.1, paragraph (g)(1)(vii) is amended in the first sentence by revising the phrase "Alien Registration Receipt Card" to read "Permanent Resident Card".

PART 210—SPECIAL AGRICULTURAL WORKERS

10. The authority citation for part 210 continues to read as follows:

Authority: 8 U.S.C. 1103, 1160, 8 CFR part 2.

§ 210.1 [Amended]

11. In § 210.1, paragraph (b) is amended in the last sentence by revising the phrase "Form I-551 Alien Registration Receipt Card" to read "Form I-551, Permanent Resident Card".

§ 210.5 [Amended]

12. In § 210.5, paragraph (b)(1) is amended in the first sentence by revising the phrase "Alien Registration Receipt Card" to read "Permanent Resident Card".

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

13. The authority citation for part 211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1227; 8 CFR part 2.

§ 211.1 [Amended]

14. In § 211.1, paragraph (a)(2) is amended by revising the phrase "Alien Registration Receipt Card" to read "Permanent Resident Card".

15. In § 211.1, paragraph (a)(5) is amended by revising the phrase "Alien Registration Receipt Card" to read "Permanent Resident Card".

16. In § 211.1, paragraph (b)(3) is amended in the second sentence by

revising the phrase "Alien Registration Receipt Card" to read "Permanent Resident Card".

§ 211.5 [Amended]

17. In § 211.5, paragraph (c) is amended in the last sentence by revising the phrase "alien registration receipt card" to read "Permanent Resident Card".

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

18. The authority citation for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

§ 216.4 [Amended]

19. In § 216.4, paragraph (d)(1) is amended by revising the phrase "Alien Registration Receipt Card" to read "Permanent Resident Card" wherever it appears in this paragraph.

20. In § 216.4, paragraph (d)(2) is amended in the third sentence by revising the phrase "Alien Registration Receipt Card" to read "Permanent Resident Card".

§ 216.5 [Amended]

21. In § 216.5, paragraph (f) is amended in the second sentence by revising the phrase "Alien Registration Receipt Card" to read "Permanent Resident Card".

§ 216.6 [Amended]

22. In § 216.6, paragraph (d)(1) is amended by revising the phrase "Alien Registration Receipt Card" to read "Permanent Resident Card" whenever it appears in this paragraph.

23. In § 216.6, paragraph (d)(2) is amended in the third sentence by revising the phrase "Alien Registration Receipt Card" to read "Permanent Resident Card".

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

24. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

§ 245.2 [Amended]

25. In § 245.2, paragraph (b) is amended in the second sentence by revising the phrase "Alien Registration Receipt Card" to read "Permanent Resident Card".

PART 247—ADJUSTMENT OF STATUS OF CERTAIN RESIDENT ALIENS

26. The authority citation for part 247 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1257.

§ 247.14 [Amended]

27. Section 247.14 is amended by revising the phrase "alien-registration receipt card" to read "Permanent Resident Card".

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

28. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 2101a, 1301-1305.

§ 264.1 [Amended]

29. In § 264.1(b), the entry for the Form I-551 is amended by revising the

phrase "Alien Registration Receipt Card" to read "Permanent Resident Card".

§ 264.5 [Amended]

30. The heading for § 264.5 is amended by revising the phrase "Alien Registration Card" to read "Permanent Resident Card".

31. In § 264.5, paragraph (b) is amended in the introductory text by revising the phrase "alien registration card" to read "Permanent Resident Card".

32. In § 264.5, paragraph (c)(2) is amended by revising the phrase "alien registration card" to read "Permanent Resident Card".

33. In § 264.5, paragraph (e)(1)(ii) is amended by revising the phrase "Alien

Registration Receipt Card" to read "Permanent Resident Card".

34. In § 264.5, paragraph (g) is amended in the last sentence by revising the phrase "alien registration card" to read "Permanent Resident Card".

PART 299—IMMIGRATION FORMS

35. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

36. Section 299.1 is amended in the table by revising the entry for the Form "I-551" to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
I-551	05-01-97	Permanent Resident Card.

PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

37. The authority citation for part 316 continues to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1443, 1447; 8 CFR part 2.

§ 316.4 [Amended]

38. In § 316.4, paragraph (a)(2) is amended by revising the phrase "(Alien Registration Receipt Card)" to read "(Permanent Resident Card)".

PART 338—CERTIFICATE OF NATURALIZATION

39. The authority citation for part 338 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

§ 338.3 [Amended]

40. Section 338.3 is amended in the first sentence by revising the phrase "alien registration receipt card" to read "Permanent Resident Card".

PART 341—CERTIFICATES OF CITIZENSHIP

41. The authority citation for part 341 continues to read as follows:

Authority: 66 Stat. 173, 238, 254, 264, as amended; 8 U.S.C. 1103, 1409(c), 1443, 1444, 1448, 1452, 1455; 8 CFR part 2.

§ 341.4 [Amended]

42. Section 341.4 is amended by revising the phrase "alien registration receipt cards in his possession" to read "permanent resident cards in his or her possession".

Dated: August 7, 1998.
Doris Meissner,
Commissioner, Immigration and Naturalization Service.
 [FR Doc. 98-33667 Filed 12-18-98; 8:45 am]
BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-59-AD; Amendment 39-10954; AD 98-26-13]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires a one-time inspection to determine the material type of the stop support fittings of the main entry doors. This AD also requires repetitive visual inspections to detect cracks of certain stop support fittings of the main entry doors, and replacement of any cracked stop support fitting with a certain new stop support fitting. This amendment is prompted by reports that stress corrosion cracking was found on certain stop support fittings of the main entry doors. The actions specified by this AD are intended to detect and

correct such stress corrosion cracking, which could lead to failure of the stop support fittings. Failure of the stop support fittings could result in loss of a main entry door and consequent rapid decompression of the airplane.

DATES: Effective January 25, 1999.

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

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.
FOR FURTHER INFORMATION CONTACT: Bob Breneman, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2776; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on March 20, 1998 (63 FR 13566). That action proposed to require a one-time

inspection to determine the material type of the stop support fittings of the main entry doors. That action also proposed to require repetitive visual inspections to detect cracks of certain stop support fittings of the main entry doors, and replacement of any cracked stop support fitting with a certain new stop support fitting.

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

Support for the Proposal

Several commenters support the proposed rule.

Request to Include a Threshold for Initial Inspection

Two commenters request that the proposed compliance time for the initial high frequency eddy current (HFEC) inspection to determine the material type of the stop support fittings of the main entry doors be revised from 18 months after the effective date of this AD, as stated in the proposal, to 6 years after delivery of the airplane or 18 months after the effective date of the AD, whichever occurs later. One of the commenters points out that cracking of the fittings has been attributed to stress corrosion and that, when corrosion prevention is performed properly [i.e., in accordance with the Corrosion Prevention and Control Program (CPCP)], the growth of corrosion cracking is very slow. The commenter notes that corrosion and stress corrosion cracking is unlikely to occur on younger airplanes.

The FAA does not concur with the commenters' request to include a threshold for the initial inspection. As stated previously in the notice of proposed rulemaking (NPRM), the FAA has determined that all affected airplanes are older than 6 years since the date of manufacture of the airplane. The youngest airplane has been in service for more than seven years. Therefore, all operators are required to perform the initial inspection of the affected airplanes within 18 months after the effective date of this AD. No change to the final rule is necessary in this regard.

Request to Limit the Area of Inspection

One commenter requests that the proposed HFEC inspection to determine the material type of the stop support fittings of the main entry doors should be required only if the material of the stop support fittings is unknown, as specified in Figure 3, Table 1, of the referenced service bulletin.

The FAA concurs with the commenter that the HFEC inspection required by this AD should be required only for those stop support fittings. The FAA's intent is that the HFEC inspection be accomplished only at the locations specified in the referenced service bulletin, where the material type is unknown. The visual inspection must be accomplished only on those stop support fittings of the main entry doors that are made from either 7079-T651 or 7075-T651 material. The FAA has revised paragraph (a) of the final rule to clarify this point.

Request to Extend Repetitive Inspection Intervals

Several commenters request that the repetitive interval for accomplishment of the visual inspections to detect cracks of certain stop support fittings of the main entry doors be extended from the proposed 18 months to 36 months, as specified in Boeing Service Bulletin 747-53-2358, dated August 26, 1993 (which was referenced as the appropriate source of service information in the NPRM). One of the commenters notes that the cracks on the affected stop support fittings are attributed to stress corrosion, which is a function of environment and time. As such, the inspection interval specified in the service bulletin is based on results of inspections of the fleet of Model 747 series airplanes, and on the degree of corrosion or cracking found during those inspections. Another commenter notes that the growth rate of stress corrosion cracks depends mainly on the environment and the age of the airplane, and that growth of such cracks is relatively slow when corrosion prevention measures are accomplished properly in accordance with the CPCP.

One of these commenters also requests that the repetitive interval for the visual inspections be extended from the proposed 18 months to 2,000 flight cycles or 36 months, whichever occurs first. That commenter points out that the 18-month intervals specified in the proposal are not consistent with the inspection intervals of 2,000 flight cycles that are specified for inspections of similar fittings at main entry door 5 that are required by AD 92-02-01, amendment 39-8137 (57 FR 5373, February 14, 1992).

The FAA concurs with the commenters' requests to extend the repetitive visual inspection intervals. As a result of these comments, the FAA has reviewed results from inspections of similar fittings of main entry door 5 that were accomplished in accordance with AD 92-02-01. Based on this review, the FAA has determined that repetitive

inspections of fittings that are accomplished at 2,000-flight-cycle intervals are sufficient to detect cracked fittings in a timely manner. Therefore, the FAA has revised paragraph (a)(2)(i) of the final rule to state, ". . . repeat the visual inspection thereafter at intervals not to exceed 36 months or 2,000 flight cycles, whichever occurs first."

Request to Allow Continued Use of Subject Stop Support Fittings

One commenter requests that the proposal be revised to allow cracked stop support fittings of the main entry doors to be replaced with new stop support fittings that are made from either 7079-T651 or 7075-T651 material, provided that repetitive inspections of the replacement parts are performed at intervals of 36 months. The commenter states that a non-cracked stop support fitting made from 7079-T651 or 7075-T651 material provides the required strength capability. The commenter also notes that discarding all spares of stop support fittings made from 7079-T651 or 7075-T651 material is a waste of resources.

The FAA infers that the commenter is requesting that paragraph (a)(2)(ii) of the proposal be revised to allow installation of new parts made from either 7079-T651 or 7075-T651 material, or parts made from 7075-T73 material, and that paragraph (c) of the proposal not be included in the final rule. The FAA does not concur with the commenter's request to allow continued use of the subject stop support fittings. The FAA has determined that the cracking of the stop support fittings of the main entry doors is caused by a combination of internal residual stress resulting from the manufacturing process, clamp-up stress from the installation of the fittings, operational stress due to pressurization of the airplane, and stress corrosion. Other parts made from 7079-T651 or 7075-T651 material previously have been found to crack while in storage, due to internal residual stress. While the FAA is not requiring the replacement of uncracked stop support fittings of the main entry doors, the FAA will not promote long-term inspections of the stop support fittings by approving the installation of replacement parts that are subject to the same unsafe condition. No change to the final rule is necessary in this regard.

Request to Amend Aging Fleet Inspection and Modification Program

One commenter suggests that Boeing Service Bulletin 747-53-2358 be reviewed by the 747 Structures Task Group (STG) for possible inclusion in

the aging aircraft inspection or modification program.

The FAA infers that the commenter is requesting that the FAA delay issuance of the final rule until the STG has reviewed Boeing Service Bulletin 747-53-2358 and considered including that service bulletin in Boeing Document No. D6-35999, dated March 1989, "Aging Airplane Service Bulletin Structural Modification Program, Model 747." [The FAA previously issued AD 90-06-06, amendment 39-6490 (55 FR 8374, March 7, 1990), which requires incorporation of certain structural modifications in accordance with Boeing Document No. D6-35999.]

The FAA does not concur. The FAA has determined that rulemaking is necessary to address the unsafe condition (stress corrosion cracking on certain stop support fittings of the main entry doors, which could result in failure of the stop support fittings, loss of a main entry door, and consequent rapid decompression of the airplane). By issuing this new rule, the FAA has taken action to ensure that the stop support fittings of the main entry doors on the affected Boeing Model 747 series airplanes are inspected and replaced, if necessary, in a timely manner. This action does not preclude a review of Boeing Service Bulletin 747-53-2358 by the STG for possible inclusion in Boeing Document No. D6-35999. However, the FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. Therefore, no change to the final rule is necessary in this regard.

Explanation of Additional Changes Made to This Final Rule

In the proposal, paragraph (a)(1) reads, "If the fitting is made from 7075-T73 material, no further action is required by this AD." Since the issuance of the NPRM, the FAA has determined that such language could be misleading to operators, because follow-on actions are required for any stop support fitting of the main entry door that is made from 7079-T651 or 7075-T651 material, regardless of whether other stop support fittings are made from 7075-T73 material. Therefore, paragraph (a)(1) of the final rule has been revised to read, ". . . no further action is required by this AD for that fitting."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will

neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 515 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 164 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per door to accomplish the required HFEC inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the HFEC inspection required by this AD on U.S. operators is estimated to be \$60 per door.

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

Should an operator be required to accomplish the required visual inspection, it will take approximately 2 work hours per door to accomplish the required actions, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the visual inspection required by this AD on U.S. operators is estimated to be \$120 per door.

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, the number of hours required to accomplish it would be approximately 124 work hours per door, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$13,000 per door. Based on these figures, the cost impact of the optional terminating action on U.S. operators is estimated to be \$20,440 per door.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98-26-13 BOEING: Amendment 39-10954. Docket 97-NM-59-AD.

Applicability: Model 747-100, -100B, -200, -200B, -200C, -300, -400, and 747SR series airplanes; having line numbers 1 through 830 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct stress corrosion cracking of the stop support fittings of the main entry doors and the resultant failure of the stop support fittings, which could result in loss of a main entry door and consequent rapid decompression of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, perform a high frequency eddy current inspection to determine the material type of the stop support fittings of

the main entry doors, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747-53-2358, dated August 26, 1993. Perform the inspection only at those locations where the material type of the stop support fittings is unknown, as specified in Figure 3, Table 1, of the service bulletin.

(1) If the fitting is made from 7075-T73 material, no further action is required by this AD for that fitting.

(2) If the fitting is NOT made from 7075-T73 material, prior to further flight, perform a visual inspection to detect cracks of the stop support fitting of the main entry doors, in accordance with the service bulletin.

(i) If no crack is detected, repeat the visual inspection thereafter at intervals not to exceed 36 months or 2,000 flight cycles, whichever occurs first.

(ii) If any crack is detected, prior to further flight, replace the fitting with a stop support fitting made from 7075-T73 material, in accordance with the service bulletin.

(b) Replacement of the stop support fitting of the main entry doors with a stop support fitting made from 7075-T73 material, in accordance with Boeing Service Bulletin 747-53-2358, dated August 26, 1993, constitutes terminating action for the repetitive inspection requirements of this AD for the replaced fitting.

(c) As of the effective date of this AD, no person shall install a stop support fitting made from either 7079-T651 or 7075-T651 material on any airplane.

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

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

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

(f) The actions shall be done in accordance with Boeing Service Bulletin 747-53-2358, dated August 26, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

Issued in Renton, Washington, on December 14, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-33541 Filed 12-18-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-330-AD; Amendment 39-10955; AD 98-26-14]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-2B19 (Regional Jet Series 100 and 200) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL-600-2B19 (Regional Jet Series 100 and 200) series airplanes. This action requires a one-time visual inspection to detect chafing or cracking of all electrical wiring conduits located in the center fuel tank, and inadequate clearance between the tube assemblies and adjacent structures; and corrective actions, if necessary. This action also requires a modification to reinforce the right wing crossflow shutoff valve conduit. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct chafing or cracking of the electrical conduits in the center fuel tank and inadequate clearance between tube assemblies and adjacent structures, which could result in electrical arcing and consequent fire or explosion in the center fuel tank.

DATES: Effective January 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 5, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 20, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-330-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Luciano L. Castracane, Aerospace Engineer, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7535; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL-600-2B19 (Regional Jet Series 100 and 200) series airplanes. TCA advises that two cases of chafing on the electrical wiring conduits of the right wing crossflow valve in the center fuel tank have been reported. Findings indicate that chafing of those electrical wiring conduits may be caused by inadequate clearance between the tube assemblies and adjacent structures. These conditions, if not corrected, could result in electrical arcing and consequent fire or explosion in the center fuel tank.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin SB A601R-28-036, Revision "A," dated September 4, 1998, which describes procedures for a one-time inspection to detect chafing or cracking of all electrical wiring conduits in the center fuel tank, and inadequate clearance between the tube assemblies and adjacent structures. The alert service bulletin also describes procedures for corrective actions, which include repairing or replacing any damaged conduit that is outside specified limits with a tube assembly (as specified in the service bulletin), and relocating and reforming the conduits to provide adequate clearance. In addition, the alert service bulletin specifies procedures for a modification to reinforce the crossflow shutoff valve conduit with a bracket to ensure the continued safety of the electrical

conduit installation in the center fuel tank. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. TCA classified this alert service bulletin as mandatory and issued airworthiness directive CF-98-35, dated September 15, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada 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, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, 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 Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent electrical arcing and consequent fire or explosion in the center fuel tank.

This AD requires a one-time visual inspection to detect chafing or cracking of all electrical wiring conduits located in the center fuel tank, and inadequate clearance between the tube assemblies and adjacent structures; and corrective actions, if necessary.

This AD also requires a modification to reinforce the right wing crossflow shutoff valve conduit by installing a bracket support kit. The actions are required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

Differences Between This AD and the Relevant Service Information

Operators should note that, although the effectivity of the alert service bulletin specifies serial numbers 7003 through 7067 inclusive, and 7069 through 7246 inclusive, the applicability of this AD specifies serial numbers 7003 through 7246 inclusive. (The Canadian airworthiness directive specifies the same serial numbers as shown in the Applicability of this AD.)

Operators also should note that, although Part A of the Accomplishment

Instructions of the alert service bulletin specifies that the operator may accomplish inspections in accordance with either Option 1 or Option 2, paragraph (a) of this AD requires the accomplishment of Option 1. Option 1 specifies that corrective action is required if any sign of damage or inadequate clearance is found, whereas Option 2 specifies corrective action only if fuel leakage is found. The FAA has determined that, in cases where certain known unsafe conditions exist, and where actions to detect and correct that unsafe condition can be readily accomplished, those actions must be required. The FAA considers that Option 2 would not provide an adequate level of safety for the affected fleet. [The Canadian airworthiness directive also specifies Part A (Option 1) of the alert service bulletin.]

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**.

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

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

concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-330-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98-26-14 BOMBARDIER, INC. (Formerly Canadair): Amendment 39-10955.
Docket 98-NM-330-AD.

Applicability: Model CL-600-2B19 (Regional Jet Series 100 and 200) series airplanes, serial numbers 7003 through 7246 inclusive; 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 (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 detect and correct chafing or cracking of all electrical wiring conduits in the center fuel tank and inadequate clearance between tube assemblies and adjacent structures, which could result in electrical arcing and consequent fire or explosion in the center fuel tank, accomplish the following:

(a) Within 60 days or 400 flight hours after the effective date of this AD, whichever occurs first, accomplish a one-time visual inspection of all electrical wiring conduits located in the center fuel tank to detect discrepancies (chafing and cracking of conduits, and inadequate clearance between tube assemblies and adjacent structures), in accordance with Part A (Option 1) of the Accomplishment Instructions of Canadair Alert Service Bulletin SB A601R-28-036, Revision "A," dated September 4, 1998. During the visual inspection of all electrical wiring conduits in the center fuel tank, pay particular attention to the right wing crossflow shutoff valve conduit.

(1) If no discrepancy is found, no further action is required by this paragraph.

(2) If any discrepancy is found that is within the limits specified in the Accomplishment Instructions of the alert service bulletin, no further action is required by this paragraph.

(3) If any discrepancy is found that is outside the limits specified in the Accomplishment Instructions of the alert service bulletin, prior to further flight, repair or replace any damaged conduit with a tube assembly (as specified in the alert service bulletin), and provide adequate clearance between the tube assembly and adjacent structure, in accordance with Part B of the Accomplishment Instructions of the alert service bulletin.

(b) Within 60 days or 400 flight hours after the effective date of this AD, whichever occurs first, install a bracket modification kit to reinforce the right wing crossflow shutoff

valve conduit in the center fuel tank, in accordance with Part C of the Accomplishment Instructions of Canadair Alert Service Bulletin SB A601R-28-036, Revision "A," dated September 4, 1998.

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

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

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

(e) The actions shall be done in accordance with Canadair Alert Service Bulletin SB A601R-28-036, Revision "A," dated September 4, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF-98-35, dated September 15, 1998.

(f) This amendment becomes effective on January 5, 1999.

Issued in Renton, Washington, on December 14, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-33540 Filed 12-18-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 98-NM-290-AD; Amendment 39-10953; AD 98-26-12]

RIN 2120-AA64

Airworthiness Directives; Dornier Model 328-100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328-100 series airplanes, that requires a one-time inspection to verify correct installation of the lockplates of the roll spoiler actuators, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking of the fork flanges of the roll spoiler actuators due to incorrect installation of the lockplates, which could result in reduced structural integrity of the components of the roll spoiler actuators, and consequent reduced controllability of the airplane.

DATES: Effective January 25, 1999.

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

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D-82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328-100 series airplanes was published in the **Federal Register** on October 27, 1998 (63 FR 57258). That action proposed to require a one-time inspection to verify correct installation of the lockplates of the roll spoiler actuators, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$3,000, or \$60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98-26-12 Dornier Luftfahrt GMBH:

Amendment 39-10953. Docket 98-NM-290-AD.

Applicability: Model 328-100 series airplanes, serial numbers 3005 through 3095 inclusive; 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fork flanges of the roll spoiler actuators due to incorrect installation of the lockplates, which could result in reduced structural integrity of the components of the roll spoiler actuators, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 300 flight hours after the effective date of this AD, perform a one-time visual inspection to verify correct installation of the lockplates of the roll spoiler actuators, in accordance with Dornier Service Bulletin SB-328-27-263, dated June 29, 1998.

(1) If all lockplates of the roll spoiler actuators are correctly installed, no further action is required by this AD.

(2) If any lockplate of any roll spoiler actuator is installed incorrectly, prior to further flight, perform either an eddy current or dye penetrant inspection to detect cracks of the area surrounding the fork flanges of the roll spoiler actuators, in accordance with the service bulletin.

(i) If no crack is detected, no further action is required by this AD.

(ii) If any crack is detected, prior to further flight, replace the roll spoiler actuator with a new or serviceable roll spoiler actuator in accordance with the service bulletin.

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

send it to the Manager, International Branch, ANM-116.

Note 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.

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

(d) The inspection and replacement shall be done in accordance with Dornier Service Bulletin SB-328-27-263, dated June 29, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D-82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directive 1998-358, dated September 10, 1998.

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

Issued in Renton, Washington, on December 14, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-33538 Filed 12-18-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-195-AD; Amendment 39-10958; AD 98-26-15]

RIN 2120-AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that currently requires repetitive detailed visual inspections to detect cracks in the shear cleats of the roller guide structural support of the passenger door, and replacement of any cracked shear cleat with a new shear cleat. That AD also provides for an optional terminating modification that constitutes

terminating action for the repetitive inspections. This amendment mandates accomplishment of the previously optional terminating modification. This amendment is prompted by reports indicating that fatigue cracking was detected in the roller guide shear cleats of the passenger door. The actions specified by this AD are intended to prevent such fatigue-related cracking, which could result in structural failure or loss of the passenger door, and consequent rapid depressurization of the airplane during flight.

DATES: Effective January 25, 1999.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 12, 1997 (62 FR 40267, July 28, 1997).

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97-16-01, amendment 39-10090 (62 FR 40267, July 28, 1997), which is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, was published in the **Federal Register** on October 27, 1998 (63 FR 57266). The action proposed to require repetitive detailed visual inspections to detect cracks in the shear cleats of the roller guide structural support of the passenger door, and replacement of any cracked shear cleat with a new shear cleat. The action also proposed to mandate accomplishment of the previously optional terminating modification.

Comments

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

The commenter supports the proposed rule.

Conclusion

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

Cost Impact

There are approximately 57 Jetstream Model 4101 airplanes of U.S. registry that will be affected by this AD.

The inspections that are currently required by AD 97-16-01, and retained in this AD, take approximately 3 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be \$10,260, or \$180 per airplane, per inspection cycle.

The new modification that is required by this AD will take approximately 55 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts will cost approximately \$2,460 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be \$328,320, or \$5,760 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-10090 (62 FR 40267, July 28, 1997), and by adding a new airworthiness directive (AD), amendment 39-10958, to read as follows:

98-26-15 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39-10958. Docket 97-NM-195-AD. Supersedes AD 97-16-01, Amendment 39-10090.

Applicability: Jetstream Model 4101 airplanes, constructor's numbers 41004 through 41099 inclusive; 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-related cracking in the shear cleats of the roller guide structural support of the passenger door, which could result in structural failure or loss of the passenger door, and consequent rapid depressurization of the airplane during flight, accomplish the following:

Restatement of Requirements of AD 97-16-01

(a) Except as provided by paragraph (b) of this AD: Prior to the accumulation of 6,000 landings, or within 60 days after August 12, 1997 (the effective date of AD 97-16-01, amendment 39-10090), whichever occurs later, perform a detailed visual inspection to

detect cracks of the shear cleats of the roller guide structural support of the passenger door, in accordance with Part 1 of the Accomplishment Instructions of Jetstream Alert Service Bulletin J41-A52-043, Revision 2, dated May 6, 1997. Repeat the detailed visual inspection, as specified in Part 2 of the Accomplishment Instructions of the alert service bulletin, thereafter at intervals not to exceed 1,500 landings.

Note 2: Accomplishment of the initial detailed visual inspection prior to August 12, 1997, in accordance with Jetstream Alert Service Bulletin J41-52-043, dated March 14, 1997, or Revision 1, dated April 11, 1997, is considered acceptable for compliance with the initial inspection required by paragraph (a) of this AD.

(1) If one cracked shear cleat is detected, and the crack is greater than 0.50 inches, prior to further flight, replace the cracked shear cleat with a new shear cleat in accordance with the alert service bulletin.

(2) If one cracked shear cleat is detected, and the crack is less than or equal to 0.50 inches, within 170 landings following accomplishment of the inspection required by this paragraph, replace the cracked shear cleat with a new shear cleat in accordance with the alert service bulletin.

(3) If more than one cracked shear cleat is detected, but no single crack is greater than 0.50 inches in length, prior to further flight, replace all cracked shear cleats with new shear cleats in accordance with the alert service bulletin.

(b) For airplanes on which all shear cleats have been replaced: Inspect as required by paragraph (a) of this AD, prior to the accumulation of 6,000 total landings on the highest time new shear cleat, or within 60 days after August 12, 1997, whichever occurs later. Repeat the detailed visual inspection thereafter at intervals not to exceed 1,500 landings.

New Requirements of This AD

(c) Modify the passenger door (Modification No. JM41576) at all four roller guide locations in accordance with Jetstream Service Bulletin J41-52-050, dated May 6, 1997, at the time specified in paragraph (c)(1) or (c)(2) of this AD, whichever occurs later. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

(1) Within 4,000 landings or 2 years after accomplishment of the initial inspection required by paragraph (a) of this AD. Or

(2) Within 6 months after the effective date of this AD.

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

Note 3: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

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

(f) The actions shall be done in accordance with Jetstream Alert Service Bulletin J41-A52-043, Revision 2, dated May 6, 1997, and Jetstream Service Bulletin J41-52-050, dated May 6, 1997. This incorporation by reference was approved previously by the Director of the **Federal Register** as of August 12, 1997 (62 FR 40267, July 28, 1997). Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

Issued in Renton, Washington, on December 15, 1998.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-33690 Filed 12-18-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASO-12]

Establishment of Class D and E Airspace, Amendment to Class D and E Airspace; Montgomery, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This corrective action changes the effective date for the amendment of the Class D and E surface areas airspace for Montgomery Regional Airport—Dannelly Field, Montgomery, AL, and establishment of Class D and E surface areas airspace for Maxwell AFB, AL. The airspace docket was not published in the **Federal Register** by the required date of December 3, 1998; therefore, the effective date of the amendment and establishment of the Class D and E surface areas airspace must also be delayed to coincide with airspace charting dates.

EFFECTIVE DATE: The effective date of 0901 UTC, January 28, 1999, is delayed to 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

SUPPLEMENTARY INFORMATION: Airspace Docket No. 98-ASO-12, published in the **Federal Register** on December 4, 1998 (63 FR 66980), amended Class D and E surface areas airspace for Montgomery Regional Airport—Dannelly Field, Montgomery, AL, and established Class D and E surface areas airspace for Maxwell AFB, AL. This action was originally scheduled to become effective on January 28, 1999; however, the airspace docket was not published in the **Federal Register** by the required date of December 3, 1998, requiring the effective date of this action to be delayed until March 25, 1999, to coincide with airspace charting dates.

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).

Delay of Effective Date

The effective date on Airspace Docket No. 98-ASO-12 is hereby delayed from January 28, 1999, to March 25, 1999.

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

Issued in College Park, Georgia on December 7, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98-33600 Filed 12-18-98; 8:45 am]

BILLING CODE 45910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 98-AWS-48]

Revision of Class E Airspace; Burnet, TX**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Direct final rule; request for comments.

SUMMARY: This amendment revises Class E airspace at Burnet, TX. The development of a global positioning system (GPS) standard instrument approach procedure (SIAP) to Kate Craddock Field, Burnet, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet to more above the surface for instrument flight rules (IFR) operations to Kate Craddock Field, Burnet, TX.

DATES: Effective 0901 UTC, March 25, 1999. Comments must be received on or before February 19, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98-ASW-48, Fort Worth, TX 76193-0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 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 Burnet, TX. The development of a GPS SIAP to Kate Craddock Field, Burnet, 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 IFR operations to Kate Craddock Field, Burnet, TX.

Class E airspace designations are published in Paragraph 6005 of FAA

Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any 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, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted to response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98-ASW-48." 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) 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. 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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Burnet, TX [Revised]

Burnet Municipal Kate Craddock, Field, TX
(Lat. 30°44'20" N., long. 98°14'19" W.)

Burnet NDB

(Lat. 30°44'21" N., long. 98°14'14" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Burnet Municipal Kate Craddock Field and within 2.5 miles each side of the 202° bearing from the Burnet NDB extending from the 6.7-mile radius to 7.4 miles southwest of the airport and within 1 mile each side of the 016° bearing from the airport extending from the 6.7-mile radius to 8.7 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on December 10, 1998.

Albert L. Viselli,

*Acting Manager, Air Traffic Division,
Southwest Region.*

[FR Doc. 98-33602 Filed 12-18-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-49]

Revision of Class E Airspace; Austin, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the description of the Austin Class E airspace area by changing its point of origin from the Robert Mueller Municipal Airport to the airport's present geographical coordinates. The FAA is taking this action due to the planned closure of Robert Mueller Municipal Airport and the transfer of airport operations to Austin-Bergstrom International Airport. The intent of this action is to facilitate the transfer of airport operations and provide adequate controlled airspace for aircraft operating

under Instrument Flight Rules (IFR) in the vicinity of Austin, TX.

DATES: *Effective:* 0601 UTC, May 20, 1999, *Comment Date:* Comments must be received on or before February 19, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98-ASW-49, Fort Worth, TX 76193-0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, 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 817-322-5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the location of the Class E airspace at Austin, TX. This action revises the description of the Austin, TX Class E airspace area by changing its point of origin from the Robert Mueller Municipal Airport to the airport's present geographical coordinates. The FAA is taking this action due to the planned closure of Robert Mueller Municipal Airport and the transfer of airport operations to Austin-Bergstrom International Airport. The intent of this action is to facilitate the transfer of airport operations and provide adequate controlled airspace for aircraft operating under IFR in the vicinity of Austin, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any 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, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this 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. 98-ASW-49." 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) 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. 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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ASW TX E5 Austin, TX [Revised]

Point of Origin
(Lat. 30°17'55" N., long. 97°42'06" W.)
Austin, Lakeway Airpark, TX
(Lat. 30°21'27" N., long. 97°59'40" W.)
Lago Vista, Rusty Allen Airport, TX
(Lat. 30°29'55" N., long. 97°58'10" W.)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of the Point of Origin and within a 6.4-mile radius of Lakeway Airpark and within a 6.4-mile radius of Lago Vista Rusty Allen Airport.

* * * * *

Issued in Fort Worth, TX, on December 10, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–33598 Filed 12–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–50]

Revision of Class E Airspace; Taylor, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises Class E airspace at Taylor, TX. The development of a very high frequency omnidirectional range/distance measuring equipment (VOR/DME) standard instrument approach procedure (SIAP) to Taylor Municipal Airport, Taylor, 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 to Taylor Municipal Airport, Taylor, TX.

DATES: *Effective:* 0901 UTC, March 25, 1999. *Comment Date:* Comments must be received on or before February 19, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–50, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation

Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, 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 817–322–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the location of the Class E airspace at Taylor, TX. The development of a VOR/DME SIAP to Taylor Municipal Airport, Taylor, 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 to Taylor Municipal Airport, Taylor, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any 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, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this 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. 98-AWS-50." 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 level 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) 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. 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 14 CFR part 71 continues to read as follows:

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

§71.1 [Amended]

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

* * * * *

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

* * * * *

ASW TX E5 Taylor, TX [Revised]

Taylor Municipal Airport, TX
(Lat. 30°34'19" N., long. 97°26'35" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Taylor Municipal Airport and within 1.6 miles each side of the 039° bearing from the airport extending from the 6.4-mile radius to 11.2 miles northeast of the airport and within 3.9 miles each side of the 021° bearing from the airport extending from the 6.4-mile radius to 7.3 miles northeast of the airport.

* * * * *

Issued in Fort Worth, TX, on December 10, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98-33597 Filed 12-18-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-51]

Establishment of Class E Airspace; Austin, Horseshoe Bay, TX and Revocation of Class E Airspace, Marble Falls, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment establishes Class E airspace at Austin, Horseshoe Bay, TX and revokes the existing Class E airspace at Marble Falls, TX. The decision to associate the Class E airspace with Austin, TX instead of Marble Falls, TX; the change of the name of the airport from Horseshoe Bay Airport to Horseshoe Bay Airpark; and the development of a nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) to Horseshoe Bay Airpark, Marble Falls, TX, have 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 to Horseshoe Bay Airpark, Marble Falls, TX.

DATES: Effective 0901 UTC, March 25, 1999. Comments must be received on or before February 19, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98-ASW-51, Fort Worth, TX 76193-0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 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 establishes Class E airspace at Austin, Horseshoe Bay Airpark, TX and revokes the existing Class E airspace at Marble Falls, TX. The decision to associate the Class E airspace with Austin, TX instead of Marble Falls, TX; the change of the name of the airport from Horseshoe Bay Airport to Horseshoe Bay Airpark; and the development of a nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) to Horseshoe Bay Airpark, Marble Falls, TX, have made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to Horseshoe Bay Airpark, Marble Falls, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any 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 commenters' 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, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this 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. 98-ASW-51." 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) 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. 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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX 35 Austin, Horseshoe Bay Airpark, TX [New]

Horseshoe Bay Airpark, TX
(Lat. 30°31'37" N., long. 98°21'31" W.)
Horseshoe Bay Resort NDB
(Lat. 30°31'24" N., long. 98°21'28" W.)

That airspace extending upward from 700 feet above the surface within 6.5-mile radius of Horseshoe Bay Airpark and within 5.5 miles each side of the 002° bearing of the Horseshoe Bay Resort NDB extending from the 6.5-mile radius to 10 miles north of the NDB.

* * * * *

ASW TX E5 Marble Falls, TX [Removed]

* * * * *

Issued in Fort Worth, TX, on December 10, 1998.

Albert L. Viselli,

*Acting Manager, Air Traffic Division,
Southwest Region.*

[FR Doc. 98-33596 Filed 12-18-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 98-ASW-52]

Revision of Class E Airspace; San Angelo, TX**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Direct final rule; request for comments.

SUMMARY: This amendment revises Class E airspace at San Angelo, TX. The development of a nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) to Mathis Field, San Angelo, TX, had 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 to Mathis Field, San Angelo, TX.

DATES: Effective 0901 UTC, March 25, 1999. Comments must be received on or before February 19, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98-ASW-52, Fort Worth, TX 76193-0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 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 San Angelo, TX. The development of a NDB SIAP to Mathis Field, San Angelo, 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 IFR operations to Mathis Field, San Angelo, TX.

Class E airspace designations are published in Paragraph 6005 of FAA

Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any 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, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA public contact concerned with the substance of this 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. 98-ASW-52." 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) 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. 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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 San Angelo, TX [Revised]

Mathis Field, TX

(Lat. 31°21'30" N., long 100°29'46" W.)

San Angelo VORTAC

(Lat. 31°22'30" N., long. 100°27'18" W.)

Mathis Field ILS Localizer

(Lat. 31°21'49" N., long. 100°29'05" W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Mathis Field and within 8 miles south and 4 miles north of the Mathis Field ILS Localizer northeast course extending from the 7.6-mile radius to 16 miles northeast of the airport and within 8 miles south and 4 miles north of the Mathis Field ILS Localizer southwest course extending from the 7.6-mile radius to 16 miles southwest of the airport and within 8 miles south and 4 miles north of the 065° radial of the San Angelo VORTAC extending from the 7.6-mile radius to 16 miles northeast of the airport.

* * * * *

Issued in Fort Worth, TX, on December 10, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98-33595 Filed 12-18-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-53]

Revision of Class E Airspace; Roswell, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises Class E airspace at Roswell, NM. The development of an instrument landing system (ILS) standard instrument approach procedure (SIAP) to Roswell Industrial Air Center, Roswell, NM, 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 to Roswell Industrial Air Center, Roswell, NM.

DATES: Effective 0901 UTC, May 20, 1999. Comments must be received on or before February 19, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98-ASW-53, Fort Worth, TX 76193-0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 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 Roswell, NM. The development of an ILS SIAP to Roswell Industrial Air Center, Roswell, NM, 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 IFR operations to Roswell Industrial Air Center, Roswell, NM.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any 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, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this 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. 98-ASW-53." 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) 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. 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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW NM E5 Roswell, NM [Revised]

Roswell Industrial Air Center, NM
(Lat. 33°18'06" N., long. 104°31'50" W.)
Chisum VORTAC

(Lat. 33°20'15" N., long. 104°37'17" W.)

Roswell Localizer

(Lat. 33°16'58" N., long. 104°32'27" W.)

That airspace extending upward from 700 feet above the surface within a 12.7-mile radius of Roswell Industrial Air Center and within 4 miles each side of the Chisum VORTAC 290° radial extending from the 12.7-mile radius to 23.3 miles northwest of the airport and within 4 miles each side of the Roswell Localizer northeast course extending from the 12.7-mile radius to 13.7 miles northeast of the airport.

* * * * *

Issued in Fort Worth, TX, on December 10, 1998.

Albert L. Viselli,

*Acting Manager, Air Traffic Division,
Southwest Region.*

[FR Doc. 98–33594 Filed 12–18–98; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 235

Guides Against Deceptive Labeling and Advertising of Adhesive Compositions

AGENCY: Federal Trade Commission.

ACTION: Rescission of the Guides Against Deceptive Labeling and Advertising of Adhesive Compositions.

SUMMARY: On April 9, 1998 the Commission published a **Federal Register** notice initiating the regulatory review of the Federal Trade Commission's ("Commission") Guides Against Deceptive Labeling and Advertising of Adhesive Compositions ("Adhesive Compositions Guides" or "the Guides"), 16 CFR Part 235. The Commission has now completed its review, and determined to rescind the Guides.

EFFECTIVE DATE: December 21, 1998.

ADDRESS: Requests for copies of the **Federal Register** Notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, DC 20580. The notice and news release announcing the rescission of the Guides are available on the Internet at the Commission's website, "<http://www.ftc.gov>".

FOR FURTHER INFORMATION CONTACT:

Erika Wodinsky, Assistant Regional Director, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 98103, telephone number (415) 356–5270, E-mail "ewodinsky@ftc.gov".

SUPPLEMENTARY INFORMATION: The Adhesive Compositions Guides, promulgated by the Commission on

November 8, 1967, provide guidance to manufacturers, distributors, wholesalers, jobbers, and retailers of adhesive products regarding the labeling and advertising of these products. The Guides counsel against the use of terms that suggest that various adhesive products contain or have the properties of metal, solder or weld, porcelain, epoxy, and rubber if those products do not, in fact, have the same chemical or physical properties as the specified products. See Guides 1–5. In addition, the Guides contain a general, overall statement about what types of claims for adhesive products will be viewed as deceptive in advertising or labeling. In particular, the Guides address the use of representations that are likely to mislead or deceive purchasers about the nature, composition, capabilities, durability, hardness, adhesive strength, lasting effect, thermal or electrical properties, or resistance to deterioration of adhesive products. One section of the Guides also advises that a representation that a product is "guaranteed" should contain a clear and conspicuous disclosure of the extent of the guarantee, any material conditions or limitations imposed by the guarantor, the manner in which the guarantor will perform thereunder, and the identity of the guarantor. Finally, the Guides advise against manufacturers and distributors providing another person with promotional materials through which that person deceives consumers with respect to adhesive products.

The Commission has determined, as part of its oversight responsibilities, to review rules and industry guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides, and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. The Commission solicited comments on the Adhesive Compositions Guides in the **Federal Register** on April 9, 1998, 63 FR 17348. The Commission's staff also mailed copies of the notice to three industry trade associations, representing over 150 industry members, to ensure that all interested parties would have an opportunity to comment. The comment period ended June 8, 1998.

The Commission received three comments. Two comments were from consumers who supported retaining the Guides and expressed general concern about the need to prevent deception in labeling adhesive products. Although both letters provided thoughtful comment on the importance of protecting consumers from deception,

neither offered any specific examples of deception observed in this industry.

The third comment was submitted by the Adhesives and Sealant Council, Inc. ("ASC"), an industry trade association. ASC expressed concern that the Guides, as presently written, have little practical use due to significant technological changes since their adoption. It noted that:

Since the early 1970's a wide range of adhesives and sealants, designed for specific applications, have entered the commercial market and it would be beneficial to today's more sophisticated consumers if the Guidelines offered descriptions [of] the various types of adhesives, i.e., silicones, urethanes, acrylics or epoxy adhesives.

ASC also suggested that the Guides, if retained, might require a statement of the type and percentage of any solvent content within a product. In addition, ASC suggested that the Guides have better definitions, in light of the new types of materials being used today. It noted, for example, that "the term 'rubber' normally means natural rubber unless there is some type of prefix included such as 'silicone rubber,'" and suggested that the term be defined more broadly to include "elastomeric materials not necessarily based on natural rubber." The association recommended that the Guides be discontinued unless they can be modified substantially.

Industry compliance with the Guides appears to be satisfactory. In the 31 years since the Guides were issued, the Commission has not received any complaints or initiated any enforcement actions relating in any way to these Guides. If, in the future, deceptive practices prove to be a problem in this industry, however, the Commission may pursue enforcement actions, under section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as needed on a case-by-case basis.

For the reasons explained in this notice, the Commission has determined to rescind the Guides because they are no longer necessary.

List of Subjects in 16 CFR Part 235

Adhesives, Advertising, Labeling, Trade practices.

PART 235—[REMOVED]

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends Chapter I of Title 16 of the Code of Federal Regulations by removing Part 235.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 98-33704 Filed 12-18-98; 8:45 am]

BILLING CODE 6750-01-P

FEDERAL TRADE COMMISSION

16 CFR PART 243

Guides for the Decorative Wall Paneling Industry

AGENCY: Federal Trade Commission.

ACTION: Rescission of the Guides for the Decorative Wall Paneling Industry.

SUMMARY: On March 27, 1998, the Commission published a **Federal Register** notice initiating a regulatory review of the Federal Trade Commission's ("Commission") Guides for the Decorative Wall Paneling Industry ("Decorative Wall Paneling Guides" or "the Guides"), 16 CFR Part 243, under the Commission's program to review all rules and guides. The Commission has now completed its review and determined to rescind the Guides.

EFFECTIVE DATE: December 21, 1998.

ADDRESS: Requests for copies of the **Federal Register** notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, DC 20580. The notice and news release announcing the rescission of the Guides are available on the Internet at the Commission's website, "<http://www.ftc.gov>".

FOR FURTHER INFORMATION CONTACT: Eric Nickerson, Investigator, Federal Trade Commission, Denver Regional Office, 1961 Stout Street, Suite 1523, Denver, CO 80294, telephone number (303) 844-3584, E-mail "enickerson@ftc.gov".

SUPPLEMENTARY INFORMATION: The Decorative Wall Paneling Guides, promulgated by the Commission on December 15, 1971, provide guidance to manufacturers, retail distributors, and other suppliers ("sellers") of decorative wall panels with regard to labeling, advertising, and promoting their products in a manner consistent with Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The Guides are designed to protect purchasers from being misled by the appearance of a product, or by deceptive descriptions, depictions, designations, or representations in advertisements, labels, or other promotional materials.

The Guides provide examples of deceptive and non-deceptive descriptions for wood and wood imitations to ensure that prospective

purchasers are not misled by a product's appearance. For example, Section 243.2(a)(5) provides that "[d]escribing a nonlumber product, such as particleboard, hardboard, fiberboard, flakeboard, and products of similar composition, as 'wood'" is a false representation. The Guides also suggest that sellers affirmatively disclose the composition and other attributes of the products being offered. Additionally, the Guides provide for disclosure of material facts that would be helpful to consumers in making purchase decisions. The Guides suggest that affirmative disclosures be provided in advertising and labeling when: (1) A wall panel's appearance could mislead purchasers as to its true composition; or (2) a representation is made that is susceptible of at least one misleading interpretation.

The Commission has determined, as part of its oversight responsibilities, to review rules and industry guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides, and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. The Commission solicited comments on the Decorative Wall Paneling Guides in the **Federal Register** on March 27, 1998, 63 FR 14865. The Commission's staff also mailed copies of the notice to approximately 100 industry representatives to ensure that all interested parties would have an opportunity to comment. The comment period ended May 26, 1998.

The Commission received one comment, from the Hardwood, Plywood & Veneer Association ("HPVA"). The comment supported retaining the Guides because "[d]ecorative paneling still represents a significant sector of the interior finish products market."¹ The commenter stated that the Guides benefit sellers by "establishing a common basis of understanding and fair competition." The commenter also noted, however, the existence of at least one recognized standard for decorative wall panels. This voluntary industry standard, the "American National Standard For Hardwood And Decorative Plywood" or "ANSI/HPVA HP-1-1994" (hereafter referred to as the "ANSI standard"), became effective in 1994, superseding earlier versions published in 1983 and 1993. Both the 1983 and 1994 versions of the standard were the result of joint efforts of the American National Standards Institute, Inc., and

¹ HPVA, #1.

the Hardwood, Plywood & Veneer Association.² The "ANSI Canvass Method," in which industry members with an interest in hardwood and decorative plywood were contacted, was used to achieve consensus for the standard.³

The ANSI standard sets forth detailed product quality, labeling, and testing requirements for a variety of wood- and veneer-finished products. Specifically, the ANSI/HPVA publication's abstract states, in part, that the ANSI Standard for Hardwood and Decorative Plywood:

[E]stablishes nationally recognized classifications, quality criteria, test methods, definitions, and product marking and designation practices for plywood produced primarily from hardwoods. It is intended for voluntary use for reference in trade literature, catalogs, sales contracts, building codes * * * to describe the quality aspects of the product and the means to determine conformance.

While, unlike the Guides, the ANSI standard does not expressly prohibit sellers from misrepresenting the composition of a particular wood or simulated wood product, it provides detailed classifications and criteria for product advertising and labeling. The Commission believes that the ANSI voluntary industry standard indeed provides an adequate basis for a common understanding among industry members through its highly specific descriptions of the qualities and characteristics of hardwood and decorative plywood products.

Industry compliance with both the Guides and the ANSI standard appears to be exemplary. In the 27 years since the Guides were issued, the Commission has not received any complaints or initiated any enforcement actions relating to these Guides. The existence of a strong industry standard and the level of compliance it commands, viewed in conjunction with the Commission's unfettered ability to pursue actions against members of this industry for engaging in unfair and deceptive acts and practices under section 5 of the FTC Act, 15 U.S.C. 45, sufficiently ensures that sellers will not mislead consumers in the future in the labeling, advertising, or sale of decorative wall paneling. If, in the future, deceptive practices prove to be a problem in this industry, however, the Commission may pursue enforcement actions as needed on a case-by-case basis.

For the reasons explained in this notice, the Commission has determined

² Prior to January 1, 1993, HPVA was known as the Hardwood & Plywood Manufacturers Association.

³ ANSI/HPVA HP-1-1994, at iv.

to rescind the Guides because they are no longer necessary.

List of Subjects in 16 CFR Part 243

Advertising, Forests and forest products, Labeling, Trade practices, Wall paneling industry.

PART 243—[REMOVED]

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends Chapter I of Title 16 of the Code of Federal Regulations by removing part 243.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 98-33705 Filed 12-18-98; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Tablet/Bolus

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Boehringer Ingelheim Vetmedica, Inc. The NADA provides for use of oxytetracycline boluses for control and treatment of bacterial enteritis and bacterial pneumonia in beef and dairy calves.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0212.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St. Joseph, MO 64506-2002, filed NADA 141-002 that provides for use of Oxy 500 and 1,000 Calf Boluses (oxytetracycline hydrochloride boluses) for control and treatment of bacterial diseases of beef and dairy calves caused by organisms sensitive to oxytetracycline, bacterial enteritis caused by *Salmonella typhimurium* and *Escherichia coli* and bacterial pneumonia caused by *Pasteurella multocida*. The NADA is approved as of October 26, 1998. The regulations are amended in 21 CFR

520.1660c by revising the section heading, paragraphs (a) and (b), by removing an outdated paragraph (c), by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), and by amending paragraph (d)(3) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 520.1660c is amended by revising the section heading, by removing paragraphs (a) and (b), by removing paragraph (c), by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), and by revising the 4th sentence in newly redesignated paragraph (d)(3) to read as follows:

§ 520.1660c Oxytetracycline hydrochloride tablets/boluses.

(a) *Specifications.* Each tablet or bolus contains 250, 500, or 1,000 milligrams of oxytetracycline hydrochloride.

(b) *Sponsors.* For sponsors in § 510.600(c) of this chapter: See 000010 for use of 500 and 1,000 milligram boluses. See 000069 for use of 250 and 500 milligram tablets.

* * * * *

(d) * * *

(3) * * * For sponsor 000069:

Discontinue treatment 7 days prior to slaughter. * * *

Dated: November 30, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98-33637 Filed 12-18-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline and Monensin Sodium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for the use of approved chlortetracycline Type A medicated articles and monensin sodium Type A medicated articles in making Type C medicated chicken feed used as an aid in the reduction of mortality due to *E. coli* infections susceptible to such treatments and as an aid in the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati* in broiler chickens.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0209.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is the sponsor of ANADA 200-263 that provides for the use of approved ChlorMax™ Coban®, chlortetracycline Type A medicated articles and monensin sodium Type A medicated articles) in making Type C medicated chicken feed used as an aid in the reduction of mortality due to *E. coli* infections susceptible to such treatments, and as an aid in the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati* in broiler chickens. The ANADA is approved as a generic copy of Roche Vitamins, Inc.'s NADA 121-553, Aureomycin®-Coban®. ANADA 200-263 is approved as of September 21, 1998, and the regulations are amended in 21 CFR 558.355 to reflect the approval. The basis for approval is

discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

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

§ 558.355 [Amended]

2. Section 558.355 *Monensin* is amended in paragraph (b)(11) by removing "(f)(1)(xviii)" and adding in its place "(f)(1)(xiv), (xviii)," and in paragraph (f)(1)(xiv)(b) by removing the phrase "No. 063238" and adding in its place "Nos. 046573 and 063238".

Dated: November 30, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98-33636 Filed 12-18-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[TD 8794]

RIN 1545-AW58

Increase in Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1) for Qualified Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations providing guidance relating to the increase from \$3,500 to \$5,000 of the limit on distributions from qualified retirement plans that can be made without participant consent. This increase is contained in the Taxpayer Relief Act of 1997. In addition, these regulations eliminate, for most distributions, the "lookback rule" pursuant to which the qualified plan benefits of certain participants are deemed to exceed this limit on mandatory distributions. The final and temporary regulations affect sponsors and administrators of qualified retirement plans, and participants in those plans. The final regulations also amend the existing final regulations to cross-reference the temporary regulations. The text of the temporary regulations also serves, in part, as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of the **Federal Register**.

DATES: Effective Date: These regulations are effective December 21, 1998.

Applicability Date: These final and temporary regulations generally apply to distributions made on or after March 22, 1999. However, employers are permitted to apply the final regulations and the temporary regulations other than § 1.411(a)-11T(c)(3)(i) to plan years beginning on or after August 6, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Karlan, (202) 622-6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations and the Employment Tax Regulations (26 CFR parts 1 and 31) under sections 411(a)(7), 411(a)(11), and 417(e)(1) regarding restrictions on involuntary distributions and joint and survivor annuity requirements for qualified plans. The final and temporary regulations change the existing regulations to take into account amendments made by the Taxpayer Relief Act of 1997 (TRA '97), Public Law 105-34, 111 Stat. 788 (1997).

Explanation of Provisions

A. Restrictions on Mandatory Distributions

Prior to the enactment of TRA '97, section 411(a)(11)(A) provided that if the present value of any nonforfeitable accrued benefit exceeded \$3,500, a plan met the requirements of section

411(a)(11) only if such plan provided that such benefit could not be immediately distributed without the consent of the participant. TRA '97 changed this cash-out limit to \$5,000, effective for plan years beginning after August 5, 1997. For this purpose, both before and after the enactment of TRA '97, the present value of a participant's nonforfeitable benefit is calculated in accordance with section 417(e)(3).

Interpreting the law prior to the enactment of TRA '97, § 1.411(a)-11(c)(3) provides that the written consent of a participant is required before the commencement of the distribution of any portion of the participant's accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than \$3,500. If the present value does not exceed \$3,500, the consent requirements are deemed satisfied, and the plan may distribute such portion to the participant as a single sum. The regulation further provides that, if the present value determined at the time of a distribution to the participant exceeds \$3,500, then the present value at any subsequent time is deemed to exceed \$3,500; this is commonly referred to as the "lookback rule."

Consistent with the TRA '97 change, these regulations increase the cash-out limit to \$5,000. In determining whether a participant's nonforfeitable accrued benefit may be distributed without consent during plan years beginning on or after August 6, 1997, the new cash-out limit of \$5,000 is permitted to be applied as though it were in effect for all plan years, including those beginning before August 6, 1997. Thus, for example, a calendar year plan may be amended to provide for the involuntary distribution after December 31, 1997, of the accrued benefit of a participant who terminated employment on or before that date, if the present value of the accrued benefit does not exceed \$5,000 at the time of the distribution (subject to the exception described below for optional forms of benefit under which at least one scheduled periodic distribution is still payable). This result is the same even if the accrued benefit could only have been distributed with the participant's or the spouse's consent at termination of employment because the present value of the benefit exceeded \$3,500 at that time.

In addition, these temporary regulations eliminate, for many distributions, the lookback rule under § 1.411(a)-11(c)(3). Under these regulations, a plan may provide that the present value of a participant's nonforfeitable accrued benefit generally

may be distributed without consent if that present value does not exceed the cash-out limit as determined at the time of the current distribution without regard to the present value of the participant's benefit at the time of an earlier distribution. However, under these temporary regulations, if a participant has begun to receive distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution is still payable, and if the present value of the participant's nonforfeitable accrued benefit exceeded the \$5,000 cash-out limit at the time of the first distribution under that optional form of benefit, then the present value of the participant's nonforfeitable accrued benefit may not be distributed without consent.

B. Immediate Distribution of the Present Value of a QJSA or QPSA

Prior to the enactment of TRA '97, section 417(e)(1) provided that a plan subject to sections 401(a)(11) and 417 could provide that the present value of a qualified joint and survivor annuity ("QJSA") or a qualified preretirement survivor annuity ("QPSA") would be immediately distributed if such value did not exceed \$3,500. Pursuant to section 417(e)(1), no distribution could be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant had died, the surviving spouse) consented in writing to such distribution. TRA '97 changed this dollar limit from \$3,500 to the dollar limit under section 411(a)(11)(A), effective for plan years beginning after August 5, 1997. These regulations change only the dollar limit in § 1.417(e)-1(b)(2)(i) from \$3,500 to the dollar limit under section 411(a)(11)(A), and do not revise the lookback rule set forth in that section for plans subject to sections 401(a)(11) and 417.

C. Proposed Regulations

The proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of the **Federal Register** completely repeal the lookback rule under §§ 1.411(a)-11(c)(3) and 1.417(e)-1(b)(2)(i), i.e., both for plans that are and plans that are not subject to sections 401(a)(11) and 417. In accordance with section 417(e)(1), the proposed regulations provide that, in the case of plans subject to sections 401(a)(11) and 417, consent is required after the annuity starting date for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and

survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of that present value. Where only a portion of an accrued benefit is being distributed, this provision applies only to that portion (and not to the portion with respect to which no distributions are being made).

D. Disregard of Certain Past Service

Section 411(a)(7)(B)(i) provides that, for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount not more than \$3,500 (prior to the amendment of the cash-out limit under TRA '97), as permitted under regulations prescribed by the Secretary. Section 411(a)(7)(B)(i) applies only if the distribution was made on termination of the employee's participation in the plan, and § 1.411(a)-7(d)(4)(i)(C) provides that such involuntary distributions must have been made due to the termination of the employee's participation in the plan. TRA '97 changed this \$3,500 limit to the dollar limit under section 411(a)(11)(A), effective for plan years beginning after August 5, 1997. These temporary regulations provide that, for purposes of applying section 411(a)(7)(B)(i), an involuntary distribution of an employee's nonforfeitable accrued benefit the present value of which does not exceed \$5,000 may be treated as having occurred due to termination of participation if the distribution could have been made due to termination of participation but for the fact that the present value exceeded \$3,500 at that time.

E. Conforming Amendments

Several other provisions of the Treasury Regulations incorporate the cash-out limit, and these regulations make conforming amendments to those provisions in order to incorporate the new cash-out limit under section 411(a)(11). Specifically, conforming amendments are made to the following sections: §§ 1.401(a)-20 Q&A-8(d); 1.401(a)-20 Q&A-24; 1.401(a)(4)-4(b)(2)(ii)(C); 1.401(a)(26)-4(d)(2); 1.401(a)(26)-6(c)(4); 1.411(a)-11(b); 1.411(a)-11(c)(7); 1.411(d)-4 Q&A-2(b)(2)(v); 1.411(d)-4 Q&A-4(a); 1.417(e)-1(b)(2)(i); and 31.3121(b)(7)-2(d)(2)(i).

F. Valuation Rules

Section 417(e)(3) prescribes rules and definitions for determining the present

value of an accrued benefit under a defined benefit plan for purposes of sections 417 and 411(a)(11)(A). (In the case of a defined contribution plan, the present value of the accrued benefit is the value of the account balance.) The present value of a participant's accrued benefit for purposes of the cash-out limit is determined in accordance with section 417(e)(3) using the interest rate and mortality tables in effect under the plan for the annuity starting date. Thus, for example, if the present value of the participant's accrued benefit using the rate described in section 417(e)(3)(B) (often referred to as the "PBG rate") exceeds \$5,000, and the plan is subsequently amended to reflect the interest rate described in section 417(e)(3)(A)(ii), the plan may provide that the present value of the accrued benefit may be distributed without the participant's or spouse's consent if the value of the accrued benefit does not exceed \$5,000, as determined under the plan provisions then in effect.

G. Benefits Protected From Reduction or Elimination

Section 411(d)(6) provides, in general, that a plan shall be treated as not satisfying the requirements of section 401(a) if the accrued benefit of a participant is decreased, or an optional form of benefit is eliminated, by an amendment of the plan. Section 1.411(d)-4, paragraph (b)(2)(v) of Q&A-2 provides that a plan may be amended to provide for the involuntary distribution of an employee's benefit to the extent such distribution is permitted under sections 411(a)(11) and 417(e). In accordance with that provision, a plan may be amended for plan years beginning on or after August 6, 1997, to permit the involuntary distribution of an accrued benefit using a cash-out limit of \$5,000, with respect to benefits accrued before the amendment was adopted and effective. Such an amendment is permitted even if the plan, prior to amendment, did not permit involuntary distributions (as well as if the plan permitted involuntary distributions if the present value of the participant's benefit did not exceed the prior cash-out limit of \$3,500). Such an amendment will not violate the anti-cutback rules of section 411(d)(6).

H. Remedial Amendment Period

Rev. Proc. 98-14 (1998-4 I.R.B. 22) at section 4, provides the remedial amendment period for certain plan amendments made pursuant to TRA '97. A plan may be amended retroactively to implement the increase in the cash-out limit to \$5,000 in accordance with section 4 of the revenue procedure.

Special Analyses

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

Drafting Information

The principal author of these regulations is Michael J. Karlan, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for § 1.411(a)-7T and revising the entry for § 1.411(d)-4 to read as follows:

Authority: 26 U.S.C. 7805 * * *
 § 1.411(a)-7T also issued under 26 U.S.C. 411(a)(7)(B)(i).
 § 1.411(d)-4 also issued under 26 U.S.C. 411(d)(6). * * *

Par. 2. Section 1.411(a)-7 is amended by adding a sentence at the end of the concluding text of paragraph (d)(4)(i) to read as follows:

§ 1.411(a)-7 Definitions and special rules.

* * * * *
 (d) * * *

(4) *Certain cash-outs of accrued benefits.* (i) * * *

* * * * *
 * * * (For distributions made on or after March 22, 1999, see § 1.411(a)-7T.)
 * * * * *

Par. 3. Section 1.411(a)-7T is added to read as follows:

§ 1.411(a)-7T Definitions and special rules (temporary).

(a) through (d)(3) [Reserved]. For further guidance, see § 1.411(a)-7(a) through (d)(3).

(d)(4) *Certain cash-outs of accrued benefits—(i) Involuntary cash-outs.* For purposes of determining an employee's right to an accrued benefit derived from employer contributions under a plan, the plan may disregard service performed by the employee with respect to which—

(A) The employee receives a distribution of the present value of his entire nonforfeitable benefit at the time of the distribution;

(B) The requirements of section 411(a)(11) are satisfied at the time of the distribution;

(C) The distribution is made due to the termination of the employee's participation in the plan; and

(D) The plan has a repayment provision which satisfies the requirements of § 1.411(a)-7(d)(4)(iv) in effect at the time of the distribution.

(d)(4)(ii) through (v) [Reserved]. For further guidance, see § 1.411(a)-7(d)(4)(ii) through (v).

(vi) For purposes of paragraph (d)(4)(i) of this section, a distribution shall be deemed to be made due to the termination of an employee's participation in the plan if it is made no later than the close of the second plan year following the plan year in which such termination occurs, or if such distribution would have been made under the plan by the close of such second plan year but for the fact that the present value of the nonforfeitable accrued benefit then exceeded the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii). For purposes of determining the entire nonforfeitable benefit, the plan may disregard service after the distribution, as illustrated in § 1.411(a)-7(d)(2)(i).

(vii) *Effective date.* Paragraphs (d)(4)(i) and (vi) of this section apply to distributions made on or after March 22, 1999 through December 18, 2001. For plan years beginning before March 22, 1999, see § 1.411(a)-7(d)(4)(i). However, an employer is permitted to apply paragraphs (d)(4)(i) and (vi) of this section to plan years beginning on or after August 6, 1997.

(d)(5) and (6) [Reserved]. For further guidance, see § 1.411(a)-7(d)(5) and (6).

Par. 4. Section 1.411(a)-11 is amended by adding a sentence at the end of paragraph (c)(3) to read as follows:

§ 1.411(a)-11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(3) \$3,500. * * * (For distributions made on or after March 22, 1999, see § 1.411(a)-11T.)

* * * * *

Par. 5. Section 1.411(a)-11T is added to read as follows:

§ 1.411(a)-11T Restriction and valuation of distributions (temporary).

(a) and (b) [Reserved]. For further guidance, see § 1.411(a)-11(a) and (b).

(c) *Consent, etc. requirements—(1) General rule.* [Reserved]. For further guidance, see § 1.411(a)-11(c)(1).

(2) *Consent.* [Reserved]. For further guidance, see § 1.411(a)-11(c)(2).

(3) *Cash-out limit.* (i) Written consent of the participant is required before the commencement of the distribution of any portion of an accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than the cash-out limit in effect under paragraph (c)(3)(ii) of this section on the date the distribution commences. The consent requirements are deemed satisfied if

such value does not exceed the cash-out limit, and the plan may distribute such portion to the participant as a single sum. Present value for this purpose must be determined in the same manner as under section 417(e); see § 1.417(e)-1(d). If a participant has begun to receive distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution has not yet been made, and if the present value of the participant's nonforfeitable accrued benefit, determined at the time of the first distribution under that optional form of benefit, exceeded the cash-out limit currently in effect under paragraph (c)(3)(ii) of this section, then the present value of the participant's nonforfeitable accrued benefit is deemed to continue to exceed the cash-out limit. Thus, for example, if the present value of a participant's accrued benefit does not exceed the cash-out limit on the date of a distribution after termination of employment but did, at the time of an earlier in-service hardship withdrawal, exceed the cash-out limit in effect on the date of the post-termination distribution, the plan is permitted to distribute the present value of the participant's accrued benefit on the date of the post-termination distribution without the participant's consent. However, if a participant began to receive scheduled installment payments under a plan and, at that time, the

participant's accrued benefit exceeded the cash-out limit currently in effect, the present value of the participant's accrued benefit is deemed to continue to exceed the cash-out limit and may not be distributed without the participant's consent.

(ii) The cash-out limit in effect for a date is the amount described in section 411(a)(11)(A) for the plan year that includes that date. The cash-out limit in effect for dates in plan years beginning on or after August 6, 1997, is \$5,000. The cash-out limit in effect for dates in plan years beginning before August 6, 1997, is \$3,500.

(iii) *Effective date.* Paragraphs (c)(3)(i) and (ii) of this section apply to distributions made on or after March 22, 1999 through December 18, 2001. For plan years beginning before March 22, 1999, see § 1.411(a)-11(c)(3). However, an employer is permitted to apply paragraph (c)(3)(ii) of this section to plan years beginning on or after August 6, 1997.

(c)(4) through (e) [Reserved]. For further guidance, see § 1.411(a)-11(c)(4) through (e).

PARTS 1 AND 31—[AMENDED]

Par. 6. In the table below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.401(a)-20, Q&A-8, paragraph (d), first sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.401(a)-20, Q&A-24, paragraph (a)(1), fourth sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.401(a)(4)-4, paragraph (b)(2)(ii)(C)	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.401(a)(26)-4, paragraph (d)(2), last sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.401(a)(26)-6, paragraph (c)(4), first sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.411(a)-11, paragraph (b), first sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.411(a)-11, paragraph (c)(7), third sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.411(d)-4, Q&A-2, paragraph (b)(2)(v), second, third, and fourth sentences.	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.411(d)-4, Q&A-2, paragraph (b)(2)(v), second sentence	\$1,750	\$3,500.
1.411(d)-4, Q&A-4, paragraph (a), eighth sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.411(d)-4, Q&A-4, paragraph (a), last sentence in the parenthetical.	§ 1.401(a)-4 Q&A-4.	§ 1.401(a)(4)-4(b)(2)(ii)(C).
1.417(e)-1, paragraph (b)(2)(i), first, fourth, and fifth sentences.	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
31.3121(b)(7)-2, paragraph (d)(2)(i), last sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii) of this chapter.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: November 18, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98-32928 Filed 12-18-98; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8798]

RIN 1545-AW74

Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the due diligence requirements for paid preparers of federal income tax returns or claims for refund involving the earned income credit. The temporary regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The temporary regulations provide guidance to paid preparers who prepare federal income tax returns or claims for refund claiming the earned income credit. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Marc C. Porter (202) 622-4940 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1570. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR parts 1 and 602) under section 6695(g) relating to the penalty for failure of a preparer to be diligent in determining a taxpayer's eligibility for the earned income credit (EIC). Section 6695(g) was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997, Public Law 105-34 (11 Stat. 788, 955 (1997)) (the Act), effective for taxable years beginning after December 31, 1996.

Section 6695(g) imposes a \$100 penalty for each failure by an income tax return preparer to meet the due diligence requirements set forth in this regulation. The IRS may impose the section 6695(g) penalty in addition to any other applicable penalty provided by law.

In Notice 97-65 (1997-51 I.R.B. 14 (December 22, 1997)), the IRS set forth the preparer due diligence requirements for 1997 returns and claims for refund involving the EIC. To avoid the imposition of the section 6695(g) penalty for 1997 returns and claims for refund, Notice 97-65 requires preparers to meet four requirements: (1) Complete the Earned Income Credit Eligibility Checklist attached to Notice 97-65 (Eligibility Checklist), or otherwise record the information necessary to complete the Eligibility Checklist; (2) complete the Earned Income Credit Worksheet (Computation Worksheet), as contained in the 1997 Form 1040 instructions, or otherwise record the computation and information necessary to complete the Computation Worksheet; (3) have no knowledge that any information used by the preparer in determining eligibility for, and amount of, the EIC is incorrect; and (4) retain for three years the Eligibility Checklist and

Computation Worksheet (or alternative records), and a record of how and when the information used to determine eligibility for, and amount of, the EIC was obtained by the preparer. This information may be retained either as a paper record or in magnetic media format consistent with Rev. Proc. 81-46 (1981-2 C.B. 621).

Notice 97-65 also requested comments on preparer due diligence requirements for tax years after 1997. Two comments were received. The commentators did not suggest alternative due diligence requirements. One commentator suggested, however, increased education for the public. The IRS and Treasury Department adhere to the principle that education is an integral part of good tax administration. Therefore, as part of its overall EIC strategy, the IRS has established various educational tools and outreach programs for taxpayers and preparers. These efforts are intended to provide the public with the tools necessary to receive the full amount of the EIC allowed by law.

The second commentator suggested that preparers should be able to meet the due diligence requirements by using software reviewed and approved by the IRS. The IRS does not approve commercial software. The IRS is currently exploring, however, new opportunities for partnership with outside stakeholders to reduce burden, enhance customer service, and increase compliance. As part of this effort, the IRS will continue to review this comment and evaluate options.

Explanation of Provisions

The temporary and proposed regulations impose due diligence standards on persons who are income tax return preparers with respect to determining eligibility for, or the amount of, the EIC. Consistent with existing regulations under section 6695, these temporary regulations apply a modified definition of income tax return preparer. Section 7701(a)(36) provides that, in general, the term *income tax return preparer* means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return or claim for refund of tax imposed by subtitle A. The preparation of a substantial portion of a return or claim for refund is treated as if it were the preparation of such return or claim for refund. Persons are considered preparers if they give legal advice concerning a return or claim for refund or if they prepare another return which affects the return or claim for refund (§ 301.7701-15(a)(2) and (b) and § 301.7701-15(b)(3), respectively). The

regulations retain this definition of an income tax return preparer, except that preparers who merely give advice or prepare another return that affects the EIC return or claim for refund are not preparers for purposes of the section 6695(g) penalty. Rather, the due diligence standards are imposed only on paid preparers who prepare the return claiming the EIC.

The temporary regulations essentially adopt the four due diligence requirements in Notice 97-65. Thus, to avoid the penalty under section 6695(g), a preparer must: (1) Complete the Eligibility Checklist (Form 8867, *Paid Preparer's Earned Income Credit Checklist*, or such other form as may be prescribed by the IRS), or otherwise record in the preparer's files the information necessary to complete the Eligibility Checklist; (2) complete the Computation Worksheet (*Earned Income Credit Worksheet* contained in the Form 1040 instructions), or otherwise record in the preparer's files the computation and information necessary to complete the Computation Worksheet; (3) have no knowledge, and have no reason to know, that any information used by the preparer in determining eligibility for, and amount of, the EIC is incorrect; and (4) retain for three years the Eligibility Checklist and the Computation Worksheet (or alternative records), and a record of how and when the information used to determine eligibility for, and the amount of, the EIC was obtained by the preparer.

The temporary regulations also provide that the income tax return preparer may avoid the section 6695(g) penalty with respect to a particular income tax return or claim for refund if the preparer can demonstrate to the satisfaction of the IRS that, considering all the facts and circumstances, the preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of the regulations, and that the particular failure was isolated and inadvertent.

The temporary regulations will be effective for taxable years beginning after December 31, 1996. However, the Eligibility Checklist contained in Notice 97-65 has been expanded in Form 8867. Therefore, for taxable year 1997, the applicable Eligibility Checklist is the Eligibility Checklist contained in Notice 97-65. For taxable year 1998, a preparer may choose as the applicable Eligibility Checklist either the Eligibility Checklist published in Notice 97-65 modified however, by replacing, \$9,770, \$25,760, \$29,290, and \$2,250 each time these figures appear on the 1997 Eligibility

Checklist with \$10,030, \$26,473, \$30,095, and \$2,300, respectively, or Form 8867. For taxable years beginning after December 31, 1998, the applicable Eligibility Checklist will be the Form 8867.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the amount of time necessary to record and retain the required information will be nominal for those income tax return preparers that choose to use the Alternative Eligibility Record and Alternative Computation Record. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of these regulations is Marc C. Porter, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * * Section 1.6695-2T also issued under 26 U.S.C. 6695(g). * * *

Par. 2. Section 1.6695-2T is added to read as follows:

§ 1.6695-2T Preparer due diligence requirements for determining earned income credit eligibility (temporary).

(a) *Penalty for failure to meet due diligence requirements.* A person who is an income tax return preparer (preparer) of an income tax return or claim for refund under subtitle A of the Internal Revenue Code (Code) with respect to determining the eligibility for, or the amount of, the earned income credit (EIC) under section 32 and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty of \$100 for each such failure. However, no penalty will be imposed under section 6695(g) on a person who is an income tax return preparer solely by reason of—

(1) Section 301.7701-15(a)(2) and (b) of this chapter, on account of having given advice on specific issues of law; or

(2) Section 301.7701-15(b)(3) of this chapter, on account of having prepared the return solely because of having prepared another return that affects amounts reported on the return.

(b) *Due diligence requirements.* A preparer must satisfy the following due diligence requirements:

(1) *Completion of eligibility checklist.*

(i) The preparer must either—
(A) Complete Form 8867, *Paid Preparer's Earned Income Credit Checklist*, or such other form as may be prescribed by the IRS (Eligibility Checklist); or

(B) Otherwise record in the preparer's paper or electronic files the information necessary to complete the Eligibility Checklist (Alternative Eligibility Record). The Alternative Eligibility Record may consist of one or more documents containing the required information.

(ii) The preparer's completion of the Eligibility Checklist or Alternative Eligibility Record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer.

(2) *Computation of credit.* (i) The preparer must either—

(A) Complete the *Earned Income Credit Worksheet* in the Form 1040 instructions or such other form as may be prescribed by the IRS (Computation Worksheet); or

(B) Otherwise record in the preparer's paper or electronic files the preparer's EIC computation, including the method and information used to make the computation (Alternative Computation Record). The Alternative Computation Record may consist of one or more

documents containing the required information.

(ii) The preparer's completion of the Computation Worksheet or Alternative Computation Record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer.

(3) *Knowledge.* The preparer must not know, or have reason to know, that any information used by the preparer in determining the taxpayer's eligibility for, or the amount of, the EIC is incorrect. The preparer may not ignore the implications of information furnished to, or known by, the preparer, and must make reasonable inquiries if the information furnished to, or known by, the preparer appears to be incorrect, inconsistent, or incomplete.

(4) *Retention of records.* (i) The preparer must retain—

(A) A copy of the completed Eligibility Checklist or Alternative Eligibility Record;

(B) A copy of the Computation Worksheet or Alternative Computation Record; and

(C) A record of how and when the information used to complete the Eligibility Checklist or Alternative Eligibility Record and the Computation Worksheet or Alternative Computation Record was obtained by the preparer, including the identity of any person furnishing the information.

(ii) These items must be retained for three years after the June 30th following the date the return or claim for refund was presented to the taxpayer for signature, and may be retained on paper or electronically in the manner prescribed in applicable regulations, revenue rulings, revenue procedures, or other appropriate guidance.

(c) *Exception to penalty.* The section 6695(g) penalty will not be applied with respect to a particular income tax return or claim for refund if the preparer can demonstrate to the satisfaction of the IRS that, considering all the facts and circumstances, the preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular return or claim for refund was isolated and inadvertent.

(d) *Effective date—*(1) *In general.* This section applies to income tax returns and claims for refund for taxable years beginning after December 31, 1996. This section expires on December 21, 2001. For the applicable Eligibility Checklist see paragraph (d)(2) of this section.

(2) *Eligibility Checklist—*(i) *For the 1997 taxable year.* For taxable year 1997, the applicable Eligibility Checklist is the Eligibility Checklist published in Notice 97-65 (1997-51 I.R.B. 14) December 22, 1997. (See § 601.601(d)(2)(ii)(b) of this chapter.)

(ii) *For the 1998 taxable year.* For taxable year 1998 the applicable Checklist is either—

(A) The Checklist published in Notice 97-65 (1997-51 I.R.B. 14) December 22, 1997, modified however, by applying the figures \$10,030, \$26,473, \$30,095, and \$2,300 in place of \$9,770, \$25,760, \$29,290, and \$2,250, respectively, each time these figures appear on the 1997 Checklist; or

(B) Form 8867, *Paid Preparer's Earned Income Credit Checklist.*

(iii) *For taxable years after 1998.* For taxable years beginning after December 31, 1998, the applicable Eligibility Checklist is the Eligibility Checklist contained in Form 8867, *Paid Preparer's Earned Income Credit Checklist*, or such other form as may be prescribed by the IRS.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (c) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

*	*	*	*	*
(c) * * *				
CFR part or section where identified and described	Current OMB control No.			
* * * * *	* * * * *			
1.6695-2T	1545-1570			
* * * * *	* * * * *			

David S. Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: December 9, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98-33343 Filed 12-18-98; 8:45 am]

BILLING CODE 4830-01-U

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1152

Employee Responsibilities and Conduct

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) is removing its regulations on the ethical conduct of employees and financial disclosure requirements as unnecessary and obsolete. The regulations have been superseded by government-wide standards of ethical conduct and financial disclosure requirements for executive branch employees.

DATES: This final rule is effective January 20, 1999.

FOR FURTHER INFORMATION CONTACT: James Raggio, Office of General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004-1111. Telephone number (202) 272-5434 (Voice); (202) 272-5449 (TTY).

SUPPLEMENTARY INFORMATION: Pursuant to section 201 of Executive Order 12674 (April 12, 1989), as modified by Executive Order 12731 (October 17, 1990), the Office of Government Ethics (OGE) issued government-wide standards of ethical conduct for employees of the executive branch (5 CFR part 2635). These standards, which became effective on February 3, 1993, superseded the Access Board's regulations on ethical conduct in 36 CFR part 1152, subparts A, B, and C. OGE also issued regulations on financial disclosure requirements for employees of the executive branch. These regulations, which became effective on October 5, 1992, superseded the Access Board's regulations on financial disclosure requirements in 36 CFR part 1152, subpart D. The regulations in 36 CFR part 1152 are unnecessary and obsolete, and therefore are being removed.

This rule relates to agency management and personnel and the provisions of the Administrative Procedures Act regarding notice of proposed rulemaking do not apply. See 5 U.S.C. 553(a)(2).

List of Subjects in 36 CFR Part 1152

Conflict of interests.

For the reasons set forth above, under the authority of 29 U.S.C. 792(a)(6)(A), the Access Board amends chapter XI of title 36 of the Code of Federal Regulations by removing part 1152.

Lawrence W. Roffee,
Executive Director.

[FR Doc. 98-33661 Filed 12-18-98; 8:45 am]
BILLING CODE 8150-01-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1202 RIN 3095-AA66

Privacy Act Regulations

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule streamlines NARA regulations implementing the Privacy Act of 1974 by revising and simplifying policies for release of medical information, clarifying whom in NARA individuals contact with Privacy Act requests and appeals, and removing detailed internal NARA operating procedures that do not belong in the regulation. We are taking this action after conducting a review of our existing Privacy Act regulations in accordance with Executive Order 12866.

EFFECTIVE DATE: January 20, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at (301) 713-7360, extension 226, or Mary Ronan at (301) 713-6025, extension 226.

SUPPLEMENTARY INFORMATION: We published a notice of proposed rulemaking on August 26, 1998 (63 FR 45433) for a 60-day comment period. No comments were received. We have made one change to § 1202.14 to specify that the NARA standards of conduct cited in the proposed rule are the standards promulgated by the Office of Government Ethics at 5 CFR 2635.703. We will revise the rule to comply with the President's Memorandum of June 1, 1998, Plain Language in Government Writing at a future time.

The Office of Management and Budget (OMB) reviewed the proposed rule as a significant regulatory action under Executive Order 12866. OMB did not require review of this final rule. As required by the Regulatory Flexibility Act, we certify that this rule will not have a significant impact on small entities.

List of subjects in 36 CFR Part 1202

Archives and records, Privacy.

For the reasons set forth in the preamble, NARA is revising part 1202 of

title 36, Code of Federal Regulations, to read as follows:

PART 1202—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

Subpart A—General Provisions

Sec.

- 1202.1 Scope of part.
- 1202.4 Definitions.
- 1202.6 Contact point for Privacy Act assistance and referrals.
- 1202.10 Collection and use.
- 1202.12 Standards of accuracy.
- 1202.14 Rules of conduct.
- 1202.16 Safeguarding systems of records.
- 1202.18 Inconsistent issuances of NARA superseded.
- 1202.20 Records of other agencies.
- 1202.22 Subpoena and other legal demands.

Subpart B—Disclosure of Records

- 1202.30 Conditions of disclosure.
- 1202.32 Procedures for disclosure.
- 1202.34 Accounting of disclosures.

Subpart C—Individual Access to Records

- 1202.40 Forms of request.
- 1202.42 Special requirements for medical records.
- 1202.44 Granting access.
- 1202.46 Denials of access.
- 1202.48 Appeal of denial of access within NARA.
- 1202.50 Records available at a fee.
- 1202.52 Prepayment of fees over \$250.
- 1202.54 Form of payment.

Subpart D—Requests to Amend Records

- 1202.60 Submission of requests to amend records.
- 1202.62 Review of requests to amend records.
- 1202.64 Approval of requests to amend.
- 1202.66 Denial of requests to amend.
- 1202.68 Agreement to alternative amendments.
- 1202.70 Appeal of denial of request to amend a record.
- 1202.72 Statements of disagreement.
- 1202.74 Judicial review.

Subpart E—Exemptions

- 1202.90 Specific exemptions.
- Authority:** 5 U.S.C. 552a; 44 U.S.C. 2104(a).

Subpart A—General Provisions

§ 1202.1 Scope of part.

(a) This part governs requests for NARA organizational records and certain records of defunct agencies under the Privacy Act, 5 U.S.C. 552a (hereinafter referred to as the Act). This part applies to all NARA records, as defined in § 1202.4, which contain personal information about an individual and some means of identifying the individual, and which are contained in a system of records as defined in 5 U.S.C. 552a(a)(5) from which information is retrieved by use of an identifying particular assigned to the individual. The part prescribes

procedures for notifying an individual of NARA systems of records which may contain a record pertaining to him or her; procedures for gaining access and contesting the contents of such records, and other procedures for carrying out the provisions of the Act.

(b) Policies and procedures governing the disclosure and availability of NARA operational records in general are in part 1250 of this chapter.

§ 1202.4 Definitions.

For the purposes of this part:

Access means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

Agency means agency as defined in 5 U.S.C. 552(f).

Defunct agency records means the records in a Privacy Act system of an agency that has ceased to exist without a successor in function that have not yet been transferred to the National Archives of the United States.

Disclosure means a transfer by any means of a record, a copy of a record, or the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Maintain includes maintain, collect, use, or disseminate.

NARA Privacy Act appeal official means the Deputy Archivist of the United States for appeals of denials of access to or amendment of records maintained in a system of records, except where the system manager is the Inspector General. The term means the Archivist of the United States for appeals of denial of access to or amendment of records in systems of records maintained by the Inspector General.

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history and criminal or employment history, and that contains his or her name or an identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph. For purposes of this part, "record" does not include archival records that have been transferred to the National Archives of the United States.

Routine use means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

Solicitation means a request by a NARA officer or employee that an individual provide information about himself or herself.

Statistical record means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

Subject individual means the individual named or discussed in a record or the individual to whom a record otherwise pertains.

System manager means the NARA employee who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information therein.

System of records means a group of any records under the control of NARA from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to that individual.

§ 1202.6 Contact point for Privacy Act assistance and referrals.

Requests for assistance and referral to the responsible system manager or other NARA employee charged with implementing these regulations should be made to the NARA Privacy Act Officer, National Archives and Records Administration, Room 4400, 8601 Adelphi Rd., College Park, MD 20740-6001.

§ 1202.10 Collection and use.

(a) *General.* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under NARA programs will be collected directly from the subject individual to the greatest extent practicable. The system manager also will ensure that information collected is used only in conformance with the provisions of the Act and this part.

(b) *Solicitation of information.* System managers will ensure that at the time information is solicited the subject individual is informed of the authority for collecting that information, whether providing the information is mandatory or voluntary, the purposes for which the information will be used, the routine uses of the information, and the effects on the individual, if any, of not providing the information. The director of the NARA forms management program will ensure that forms used to

solicit information are in compliance with the Act and this part.

(c) *Solicitation of social security number.* (1) Before a NARA employee or NARA contractor requires an individual to disclose his or her social security number, NARA will ensure that either:

(i) The disclosure is required by Federal law; or

(ii) The disclosure was required under a Federal law or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975.

(2) If solicitation of the social security number is authorized under paragraph (c)(1) (i) or (ii) of this section, the NARA employee or NARA contractor who requests an individual to disclose his or her social security number must first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the uses that will be made of it.

(d) *Soliciting information from third parties.* A NARA employee or NARA contractor will inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

§ 1202.12 Standards of accuracy.

The system manager will ensure that all records which are used by NARA to make a determination about any individual are maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

§ 1202.14 Rules of conduct.

All NARA employees and/or NARA contractors involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, must review the provisions of 5 U.S.C. 552a and the regulations in this part, and must conduct themselves in accordance with the rules of conduct concerning the protection of nonpublic information in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635.703.

§ 1202.16 Safeguarding systems of records.

The system manager will ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm,

embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. Personnel information contained in both manual and automated systems of records will be protected by implementing the following safeguards:

(a) Official personnel folders, authorized personnel operating or work folders, and other records of personnel actions effected during a NARA employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualifications and skills, performance appraisals, and conduct, will be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnishes an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(b) System managers, at their discretion, may designate additional records of unusual sensitivity which require safeguards similar to or greater than those described in paragraph (a) of this section.

(c) System managers will permit access to and use of automated or manual personnel records only to persons whose official duties require such access, or to subject individuals or their representatives as provided by this part.

§ 1202.18 Inconsistent issuances of NARA superseded.

Any policies and procedures in any NARA issuance which are inconsistent with the policies and procedures in this part are superseded to the extent of that inconsistency.

§ 1202.20 Records of other agencies.

(a) *Records accessioned into the National Archives of the United States.* Archival records which were contained in systems of records of agencies and which have been transferred to the National Archives of the United States are exempt from most provisions of the Privacy Act (see 5 U.S.C. 552a(l)(2) and (l)(3)). Rules governing access to such records are contained in subchapter C of this chapter.

(b) *Current records of other agencies.* If NARA receives a request for access to records which are the primary responsibility of another agency, but which are maintained by or in the temporary possession of NARA on behalf of that agency in a regional records service facility, NARA will refer the request to the agency concerned for appropriate action. NARA will advise the requester that the request has been

forwarded to the responsible agency. (See 5 U.S.C. 552a(l)(1)).

(c) *Records in Government-wide Privacy Act systems.* Records in the custody of NARA which are the primary responsibility of another agency, e.g., the Office of Personnel Management (OPM) or the Office of Government Ethics (OGE), are governed by the regulations promulgated by that agency pursuant to the Act.

(d) *Records of defunct agencies in the custody of NARA.* Records of defunct agencies in the custody of NARA at a NARA records center but not yet accessioned into the National Archives of the United States are governed by the regulations in this part.

§ 1202.22 Subpoenas and other legal demands.

Access to NARA systems of records by subpoena or other legal process will be made in accordance with the provisions of part 1250 of this chapter for NARA operational records and records of defunct agencies not yet accessioned into the National Archives of the United States and part 1254 of this chapter for archival records, records center holdings, and donated historical materials.

Subpart B—Disclosure of Records

§ 1202.30 Conditions of disclosure.

No NARA employee may disclose any record in a system of records to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(a) To NARA employees who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act, as amended;

(c) For a routine use as published in a notice in the **Federal Register**;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to title 13 U.S.C.;

(e) To a recipient who has provided NARA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record. (The record will be transferred in a form that is not individually identifiable. In addition to deleting personal identifying information from records released for statistical purposes, the system manager will ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records.) The written statement must include as a minimum:

(1) A statement of the purpose for requesting the records; and

(2) Certification that the records will be used only for statistical purposes;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government; or for evaluation by the Archivist or the designee of the Archivist to determine whether the record has such value;

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality or his or her other designated representative has made a written request to NARA specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health or safety of an individual, not necessarily the individual to whom the record pertains. Upon such disclosure, a notification must be sent to the last known address of the subject individual;

(i) To either House of Congress or to a committee or subcommittee (joint or of either House, to the extent that the matter falls within its jurisdiction);

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(k) Pursuant to the order of a court of competent jurisdiction; or

(l) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

§ 1202.32 Procedures for disclosure.

(a) Address all requests for disclosure of records pertaining to a third party to the NARA Privacy Act Officer, National Archives and Records Administration, Room 4400, 8601 Adelphi Rd., College Park, MD 20740-6001. Upon receipt of such request, NARA will verify the right of the requester to obtain disclosure pursuant to § 1202.30. Upon verification, the system manager will make the requested records available. NARA will acknowledge requests within 10 workdays and will make a decision within 30 workdays, unless NARA notifies the requester that the time limit must be extended for good cause.

(b) If NARA determines that the disclosure is not permitted under § 1202.30, the system manager will deny the request in writing. The requester will be informed of the right to submit a request for review and final

determination to the appropriate NARA Privacy Act Appeal Officer.

(1) The Archivist of the United States is the NARA Privacy Act Appeal Officer for records maintained by the Office of the Inspector General. Requests for review involving records for which the Inspector General is the system manager must be addressed to the NARA Privacy Act Appeal Officer (N), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20470-6001.

(2) The Deputy Archivist of the United States is the appeal officer for all other NARA records. Requests for review involving all other records must be addressed to the NARA Privacy Act Appeal Officer (ND), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20470-6001.

§ 1202.34 Accounting of disclosures.

(a) Except for disclosures made pursuant to § 1202.30(a) and (b), an accurate accounting of each disclosure will be made and retained for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting will include the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(b) The system manager also will maintain in conjunction with the accounting of disclosures:

(1) A full statement of the justification for the disclosures;

(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent by the subject individual to a disclosure, if applicable.

(c) Except for the accounting of disclosures made under § 1202.30(g) or of disclosures made from exempt systems (see subpart E of this part), the accounting of disclosures will be made available to the subject individual upon request. Procedures for requesting access to the accounting are in subpart C of this part.

Subpart C—Individual Access to Records

§ 1202.40 Forms of requests.

(a) Individuals seeking access to their records or to any information pertaining to themselves which is contained in a system of records should notify the NARA Privacy Act Officer, National Archives and Records Administration, Rm. 4400, 8601 Adelphi Rd., College Park, MD 20740-6001.

(b) The request must be in writing and must bear the legend "Privacy Act

Request" both on the request letter and on the envelope. The request letter must contain:

(1) The complete name and identifying number of the NARA system as published in the **Federal Register**;

(2) The full name and address of the subject individual;

(3) A brief description of the nature, time, place, and circumstances of the subject individual's association with NARA; and

(4) Any other information which the subject individual believes would help NARA to determine whether the information about the individual is included in the system of records.

(c) NARA will answer or acknowledge the request within 10 workdays of its receipt by NARA.

(d) NARA at its discretion, may accept oral requests for access to a NARA system of records, subject to verification of identity.

§ 1202.42 Special requirements for medical records.

When NARA receives a request for access to medical records, if NARA believes, in good faith, that disclosure of medical and/or psychological information directly to the subject individual could have an adverse effect on that individual, the subject individual may be asked to designate in writing a physician or mental health professional to whom he or she would like the records to be disclosed, and disclosure that otherwise would be made to the subject individual will instead be made to the designated physician or mental health professional.

§ 1202.44 Granting access.

(a) Upon receipt of a request for access to non-exempt records, NARA will make such records available to the subject individual or shall acknowledge the request within 10 workdays of its receipt by NARA. The acknowledgment will indicate when the system manager will make the records available.

(b) If NARA anticipates more than a 10-day delay in making a record available, NARA also will include in the acknowledgment specific reasons for the delay.

(c) If a subject individual's request for access does not contain sufficient information to permit the system manager to locate the records, NARA will request additional information from the individual and will have 10 workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and to indicate when the records will be available.

(d) Records will be made available for authorized access during normal business hours at the NARA offices where the records are located.

(1) Requesters must be prepared to identify themselves by producing at least one piece of identification bearing a name or signature and either a photograph or physical description, e.g., a driver's license or employee identification card. NARA reserves the right to ask the requester to produce additional pieces of identification to assure NARA of the requester's identity. If the individual is unable to produce suitable identification, he or she must sign a statement asserting that he or she is the subject individual and stipulating that he or she understands the criminal penalty for perjury and the penalty in the Privacy Act for requesting or obtaining access to records under false pretenses (5 U.S.C. 552a(i)(3)). NARA will provide a form for this purpose.

(2) Requesters must sign a form indicating that they have been given access.

(e) At the written request of a subject individual, NARA may provide access by mailing a copy of the requested records to that individual or to another person designated by the subject individual. In the request, the subject individual must provide a copy of proof of identity, such as an electrostatic copy of a driver's license, or a statement asserting he or she is the subject individual and stipulating that he or she understands the criminal penalty for perjury and the penalty in the Privacy Act for requesting or obtaining access to records under false pretenses (5 U.S.C. 552a(i)(3)).

(f) Upon request, a system manager will permit a subject individual to examine the original of a non-exempt record, will provide the individual with a copy of the record, or both.

(g) Subject individuals may either pick up a record in person or receive it by mail. A system manager may not make a record available to a third party for delivery to the subject individual, except for medical records as outlined in § 1202.42, or at the explicit written direction of the subject individual in accordance with paragraph (h) of this section.

(h) Subject individuals who wish to have a person of their choosing review, accompany them in reviewing, or obtain a copy of a record must, prior to the disclosure of their record, sign a statement authorizing the disclosure. The system manager will maintain this statement with the record.

(i) The procedure for access to an accounting of disclosures is identical to

the procedure for access to a record as set forth in this section.

§ 1202.46 Denials of access.

(a) A system manager may deny a subject individual access to his or her record only on the grounds that NARA has published rules in the **Federal Register** exempting the pertinent system of records from the access requirement and the record is exempt from disclosure under the Freedom of Information Act, as amended (FOIA). Exempt systems of records are described in subpart E of this part.

(b) Upon receipt of a request for access to a record which is contained within an exempt system of records, NARA will:

(1) Review the record to determine whether all or part of the record must be released to the requester in accordance with § 1202.44, notwithstanding the inclusion of the record within an exempt system of records, and

(2) Disclose the record in accordance with § 1202.44 or notify the requester that the request has been denied in whole or in part.

(c) If the request is denied in whole or in part, the notice will include a statement specifying the applicable Privacy Act and FOIA exemptions and advising the requester of the right to appeal the decision as provided in § 1202.74.

§ 1202.48 Appeal of denial of access within NARA.

(a) Requesters denied access in whole or part to records pertaining to them may file with NARA an appeal of that denial. The appeal must be postmarked no later than 35 calendar days after the date of the denial letter from NARA.

(1) The Archivist of the United States is the NARA Privacy Act Appeal Official for records maintained by the Office of the Inspector General. Appeals involving records for which the Inspector General is the system manager must be addressed to NARA Privacy Act Appeal Official (N), National Archives and Records Administration, Washington, DC 20408.

(2) The Deputy Archivist of the United States is the NARA Privacy Act Appeal Official for all other NARA records. All other appeals must be addressed to NARA Privacy Act Appeal Official (ND), National Archives and Records Administration, Washington, DC 20408.

(b) Each appeal to the NARA Privacy Act Appeal Official must be in writing. The appeal must bear the legend "Privacy Act—Access Appeal," on both the face of the letter and the envelope.

(c) Upon receipt of an appeal, the NARA Privacy Act Appeal Official will consult with the system manager, legal counsel, and such other officials as may be appropriate. If the NARA Privacy Act Appeal Official, in consultation with these officials, determines that the request for access should be granted because the subject records are not exempt, the NARA Privacy Act Appeal Official will immediately either instruct the system manager in writing to grant access to the record in accordance with § 1202.44 or shall grant access and will notify the requester of that action.

(d) If the NARA Privacy Act Appeal Official, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the NARA Privacy Act Appeal Official immediately will notify the requester in writing of that determination. This action will constitute NARA's final determination on the request for access to the record and will include:

(1) The reason for the rejection of the appeal; and

(2) Notice of the requester's right to seek judicial review of NARA's final determination, as provided in § 1202.74.

(e) The final NARA determination will be made no later than 30 workdays from the date on which the appeal is received by the NARA Privacy Act Appeal Official. The NARA Privacy Act Appeal Official may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The NARA Privacy Act Appeal Official's notification will include an explanation of the reasons for the extension of time.

§ 1202.50 Records available at a fee.

NARA will waive fees for copies of records for the first 100 pages copied or when the cost to collect the fee will exceed the amount collected. When a fee is charged, the charge per copy is \$0.30 per page if NARA makes the copy or \$0.10 per page if the requester makes the copy on a NARA self-service copier. Fees for other reproduction processes are computed upon request.

§ 1202.52 Prepayment of fees over \$250.

If the system manager determines that the estimated total fee is likely to exceed \$250, NARA will notify the individual that the estimated fee must be prepaid prior to NARA's making the records available. NARA will remit any excess amount paid by the individual or bill the individual for an additional amount if there is a variation between the final fee charged and the amount prepaid.

§ 1202.54 Form of payment.

Payment shall be by check or money order payable to the National Archives and Records Administration and shall be addressed to the NARA Privacy Act Officer.

Subpart D—Requests To Amend Records

§ 1202.60 Submission of requests to amend records.

Subject individuals who desire to amend any record containing personal information about themselves should write to the NARA Privacy Act Officer, except that a current NARA employee who desires to amend personnel records should write to the Director, Human Resources Services Division. Each request must include evidence of and justification for the need to amend the pertinent record. Each request must bear the legend "Privacy Act—Request To Amend Record" prominently marked on both the face of the request letter and the envelope.

§ 1202.62 Review of requests to amend records.

(a) NARA will acknowledge receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment will include the system manager's determination either to amend the record or to deny the request to amend as provided in § 1202.66.

(b) When reviewing a record in response to a request to amend, the system manager will assess the accuracy, relevance, timeliness, and completeness of the existing record in light of the proposed amendment. The system manager will determine whether the amendment is justified. With respect to a request to delete information, the system manager also will review the request and existing record to determine whether the information is relevant and necessary to accomplish an agency purpose required to be accomplished by law or Executive order.

§ 1202.64 Approval of requests to amend.

If the system manager determines that amendment of a record is proper in accordance with the request to amend, he or she promptly will make the necessary amendment to the record and will send a copy of the amended record to the subject individual. NARA will advise all previous recipients of the record, using the accounting of disclosures, of the fact that an amendment has been made and give the substance of the amendment. Where practicable, NARA will send a copy of the amended record to previous recipients.

§ 1202.66 Denial of requests to amend.

If the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, NARA will advise the requester in writing of the decision. The denial letter will state the reasons for the denial of the request to amend; include proposed alternative amendments, if appropriate; state the requester's right to appeal the denial of the request to amend; and state the procedure for appealing.

§ 1202.68 Agreement to alternative amendments.

If the denial of a request to amend a record includes proposed alternative amendments and if the requester agrees to accept them, the requester must notify the system manager who will make the necessary amendments in accordance with § 1202.64.

§ 1202.70 Appeal of denial of request to amend a record.

(a) A requester who disagrees with a denial of a request to amend a record may file an appeal of that denial.

(1) If the denial was signed by a NARA system manager other than the Inspector General, the requester must address the appeal to the NARA Privacy Act Appeal Official (ND), Washington, DC 20408.

(2) If the denial was signed by the Inspector General, the requester must address the appeal to the NARA Privacy Act Appeal Official (N), Washington, DC 20408.

(3) If the requester is an employee of NARA and the denial to amend involves a record maintained in the employee's Official Personnel Folder, or in another Government-wide system maintained by NARA on behalf of another agency, NARA will provide the requester the name and address of the appropriate appeal official in that agency.

(b) Each appeal to the NARA Privacy Act appeal official must be in writing and must be postmarked no later than 35 calendar days from the date of NARA denial of a request to amend a record. The appeal must bear the legend "Privacy Act—Appeal," both on the face of the letter and the envelope.

(c) Upon receipt of an appeal, the NARA Privacy Act appeal official will consult with the system manager, legal counsel, and such other officials as may be appropriate. If the NARA Privacy Act appeal official, in consultation with these officials, determines that the record should be amended as requested, he or she immediately will instruct the system manager to amend the record in

accordance with § 1202.64 and will notify the requester of that action.

(d) If the NARA Privacy Act appeal official, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the NARA Privacy Act appeal official immediately will notify the requester in writing of that determination. This action will constitute the NARA final determination on the request to amend the record and will include:

(1) The reasons for the rejection of the appeal;

(2) Proposed alternative amendments, if appropriate, which the requester subsequently may accept in accordance with § 1202.68;

(3) Notice of the requester's right to file a Statement of Disagreement for distribution in accordance with § 1202.72; and

(4) Notice of the requester's right to seek judicial review of the NARA final determination, as provided in § 1202.74.

(e) The NARA final determination will be made no later than 30 workdays from the date on which the appeal is received by the NARA Privacy Act appeal official. In extraordinary circumstances, the NARA Privacy Act appeal official may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The NARA Privacy Act appeal official's notification must include a justification for the extension of time.

§ 1202.72 Statements of disagreement.

Upon receipt of a NARA final determination denying a request to amend a record, the requester may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement must include an explanation of why the requester believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager will maintain the Statement of Disagreement in conjunction with the pertinent record and will include a copy of the Statement of Disagreement in any disclosure of the pertinent record. The system manager will provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed only if the disclosure was subject to the accounting requirements of § 1202.34.

§ 1202.74 Judicial review.

Within 2 years of receipt of a NARA final determination as provided in § 1202.48 or § 1202.70, a requester may seek judicial review of that determination. A civil action must be filed in the Federal District Court in

which the requester resides or has his or her principal place of business or in which the NARA records are situated, or in the District of Columbia.

Subpart E—Exemptions

§ 1202.90 Specific exemptions.

(a)(1) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(1) because they contain information specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

Accordingly, these systems of records are exempt from the following sections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), and (e)(4)(G) and (H):

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(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(ii) From the access and amendment provisions of subsection (d) because access to the records in these systems of records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of either of these series of records would interfere with ongoing investigations and law enforcement or national security activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iii) From subsection (e)(1) because verification of the accuracy of all information to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(iv) From subsection (e)(4) (G) and (H) because these systems are exempt from the access and amendment provisions of subsection (d) pursuant to subsection (k)(1) of the Privacy Act.

(b)(1) The following system of records is eligible for exemption under 5 U.S.C. 552a(k)(2) because it contains investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. However, if any individual is denied any right, privilege or benefit that he would otherwise be entitled by Federal law, or for which he

would otherwise be eligible, as a result of the maintenance of such material, such material will be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, the following system of records is exempt from subsections (c)(3), (d), (e)(1) and (e)(4) (G) and (H), and (f) of 5 U.S.C. 552a:

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(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation, and reveal investigative interest by not only the Inspector General (OIG), but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in the destruction of documentary evidence, improper influencing of witnesses, endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel, the fabrication of testimony, flight of the subject from the area, and other activities that could impede or compromise the investigation. In addition, accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(ii) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel, and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the physical investigation, endanger the physical

safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iii) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OIG for the following reasons:

(A) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(B) During the course of any investigation, the OIG may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information, as it may aid in establishing patterns of inappropriate activity, and can provide valuable leads for Federal and other law enforcement agencies.

(C) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(iv) From subsection (e)(4) (G) and (H) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsection (k)(1) and (k)(2) of the Privacy Act.

(v) From subsection (f) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsection (k)(1) and (k)(2) of the Privacy Act.

(c)(1) The following system of records is eligible for exemption under 5 U.S.C. 552a(k)(5) because it contains investigatory material compiled solely for the purpose of determining

suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, this system of records is exempt from 5 U.S.C. 552a(d)(1).

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(2) Exemptions from the particular subsection is justified as access to records in the system would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation. Such knowledge might be harmful to the source who provided the information as well as violate the explicit or implicit promise of confidentiality made to the source during the investigation. Disclosure might violate the privacy of third parties.

Dated: December 14, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98-33685 Filed 12-18-98; 8:45 am]

BILLING CODE 7515-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 152-0104a FRL-6189-9]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD). This action will remove these rules from the Federally approved SIP. The intended effect of this action is to remove rules from the SIP that are no longer in effect in KCAPCD, in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the removal of these rules from the California SIP under provisions of the CAA regarding EPA action on SIP

submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on February 19, 1999, without further notice, unless EPA receives adverse comments by January 20, 1999. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of these rules, along with EPA's evaluation report for each rule, are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted requests for rescission are also available for inspection at the following locations:

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

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 M Street, Suite 290, Bakersfield, CA 93003.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1197.

SUPPLEMENTARY INFORMATION:

I. Applicability

The KCAPCD rules being removed from the California SIP include: Rule 404, Particulate Matter Concentration—Valley Basin; Rule 408, Fuel Burning Equipment—Valley Basin, Rule 411.1, Steam-enhanced Crude Oil Production Well Vents; Rule 414.2, Refinery Process Vacuum Producing Devices or Systems; Rule 414.3, Refinery Process Unit Turnaround; and Rule 414.4, Polystyrene Foam Manufacturing. These rules were repealed by KCAPCD on April 6, 1995, and submitted by the California Air Resources Board (CARB) to EPA on May 25, 1995 for removal from the SIP.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or

pre-amended Act), that included the San Joaquin Valley Area which encompassed the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD,¹ Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. See 43 FR 8964, 40 CFR 81.305. On March 20, 1991, the San Joaquin Valley Unified APCD (SJVUAPCD) was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus, Kern County Air Pollution Control District still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County.

The rules being addressed in this action were adopted by the KCAPCD prior to the formation of the SJVUAPCD. These rules were originally adopted to control particulate matter emissions in the San Joaquin Valley Air Basin, emissions from fuel burning equipment in the San Joaquin Valley Air Basin, and volatile organic compound (VOC) emissions from steam-enhanced crude oil production well vents, refinery process vacuum producing devices, refinery process unit turnarounds, and polystyrene foam manufacturing. However, all sources subject to these rules are located in the San Joaquin Valley Air Basin portion of Kern County, and therefore are under the jurisdiction of SJVUAPCD, where these rules remain in effect until the SJVUAPCD adopts a replacement rule. Due to a lack of sources in the district, these rules were rescinded by the KCAPCD on April 6, 1995, and submitted by CARB to EPA on May 25, 1995 for removal from the KCAPCD portion of the California SIP.

III. EPA Action

The KCAPCD rules that are being rescinded by today's action are listed below. EPA previously approved all these rules into the California SIP:

- Rule 404, Particulate Matter Concentration—Valley Basin, submitted May 25, 1995.
- Rule 408, Fuel Burning Equipment—Valley Basin, submitted May 25, 1995.

¹ At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

- Rule 411.1, Steam-enhanced Crude Oil Production Well Vents, submitted May 25, 1995.

- Rule 414.2, Refinery Process Vacuum Producing Devices or Systems, submitted May 25, 1995.

- Rule 414.3, Refinery Process Unit Turnaround, submitted May 25, 1995.

- Rule 414.4, Polystyrene Foam Manufacturing, submitted May 25, 1995.

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

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve this SIP revision should adverse comments be filed. This rule will be effective February 19, 1999, without further notice unless the Agency receives adverse comments by January 20, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing this final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 19, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is

unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

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

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature

of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective

and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 19, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Volatile organic compounds.

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

Dated: November 9, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(24)(vii)(E), (c)(52)(i)(C), (c)(67)(iii)(C), (c)(75)(iii), (c)(101)(ii)(F), and (c)(140)(ii)(B) to read as follows:

§ 52.220 Identification of Plan.

* * * * *

(C) * * *

(24) * * *

(vii) * * *

(E) Previously approved on August 22, 1977 and now deleted with replacement Rule 404 (valley basin only).

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(52) * * *

(i) * * *

(C) Previously approved on August 21, 1981 and now deleted without replacement Rule 414.2 (valley basin only).

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(67) * * *

(iii) * * *

(C) Previously approved on July 8, 1982 and now deleted without replacement Rule 411.1 (valley basin only).

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(75) * * *

(iii) Previously approved on August 21, 1981 and now deleted without replacement Rule 414.3 (valley basin only).

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(101) * * *

(ii) * * *

(F) Previously approved on October 11, 1983 and now deleted without replacement Rule 414.4 (valley basin only).

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(140) * * *

(ii) * * *

(B) Previously approved on May 3, 1994 and now deleted without replacement Rule 408 (valley basin only).

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[FR Doc. 98-33735 Filed 12-18-98; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 121598]

Fisheries of the Northeastern United States; Summer Flounder, Scup and Black Sea Bass Fisheries: Summer Flounder Commercial Quota Transfer From North Carolina to Virginia

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

ACTION: Commercial quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring 5,500 lb (2,495 kg) of summer flounder quota to the Commonwealth of Virginia. NMFS adjusted the quotas and announces the revised commercial quota for each state involved.

DATES: Effective December 16, 1998 through December 31, 1998.

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

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1998 calendar year was set equal to 11,105,636 lb (5,037,432 kg) (62 FR 66304, December

18, 1997). Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In calendar year 1997, a total of 2,305,985 lb (1,045,977 kg) were landed in Virginia, creating an 11,192 lb (5,077 kg) overage that was deducted from the amount allocated for landings in the State during 1998 (63 FR 23227, April 28, 1998). The resulting quota for Virginia is 2,357,377 lb (1,069,288 kg). In the calendar year 1997, a total of 1,673,345 lb (759,017 kg) were landed in North Carolina, creating a 399,740 lb (181,319 kg) overage that was deducted from the amount allocated for landings in the State during 1998 (63 FR 23227, April 28, 1998). The resulting quota for North Carolina was 2,649,849 lb (1,201,951 kg). Effective October 1998, an additional adjustment was made to the North Carolina quota to comply with a Court Order setting aside the 1997 overage, resulting in a quota of 3,049,589 lb (1,383,270 kg) (63 FR 56867, October 23, 1998).

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS, (Regional Administrator) to transfer or combine summer flounder commercial quota. The Regional Administrator is required to consider the criteria set forth in § 648.100(e)(1) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 5,500 lb (2,495 kg) of its commercial quota to Virginia. The Regional Administrator has determined that the

criteria set forth in § 648.100(e)(1) have been met, and publishes this notification of quota transfer. The revised quotas for the calendar year 1998 are: Virginia, 2,362,877 lb (1,071,801 kg); and North Carolina, 3,044,089 lb (1,380,799 kg).

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the fishery management plan regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.02b.3(b)(i)(aa) of NOAA Administrative Order 216-6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: December 16, 1998.

Gary C. Matlock,

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

[FR Doc. 98-33734 Filed 12-16-98; 3:31 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 63, No. 244

Monday, December 21, 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. 98-ANE-31-AD]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) JT9D series turbofan engines. This proposal would require initial and repetitive in-shop eddy current and on-wing ultrasonic inspections of the Combustion Chamber Outer Casing (CCOC) forward flange (L flange) fillet radius for cracking, and replacing cracked L flanges with serviceable parts. Replacement with an improved L flange constitutes terminating action to the repetitive inspections. This proposal is prompted by reports of CCOC rupture due to cracking in the L flange fillet radius. The actions specified by the proposed AD are intended to prevent CCOC rupture due to cracking, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by February 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-31-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m.,

Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-ANE-31-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, New England Region, Office of the

Regional Counsel, Attention: Rules Docket No. 98-ANE-31-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Federal Aviation Administration (FAA) has received seven reports of combustion chamber outer casing (CCOC) cracking in revenue service on certain Pratt & Whitney (PW) JT9D series turbofan engines. The investigation revealed that the first failure was associated with an under-minimum radius at the forward flange ("L" flange) fillet. A fleet-wide inspection campaign found no other discrepant CCOCs. Six subsequent forward flange cracks were found to have initiated and propagated in low cycle fatigue (LCF); 3 of these cracks transitioned to rapid tensile failure during takeoff, resulting in aborted takeoffs, stalls, inflight engine shutdowns or metal in the tailpipe. The FAA determined that these failures were not special cases, but were associated with the design of this part operated in this application. All reports of large cracking have been found to have initiated at the 4:00 position. This condition, if not corrected, could result in CCOC rupture due to cracking, which could result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6343 Revision 1, dated October 8, 1998, that describes procedures for initial and repetitive on-wing ultrasonic inspections of CCOC L flange fillet radius for cracking; JT9D Engine Manual (Part Number P/N 646028, P/N 770407, P/N 770408, as appropriate) Revision No. 104 (or Temporary Revision No. 72-6517, Temporary Revision No. 72-6334, or Temporary Revision No. 72-6206, which were superseded by manual Revision No. 104), that describes procedures for in-shop eddy current inspections of the L flange; and PW SB No. 4482, Revision 1, dated July 8, 1976, that describes procedures for installation of replacement L flanges.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive in-shop and on-wing inspections of the CCOC L flange fillet radius for cracking, and

replacement of cracked L flanges with serviceable parts. Installation of an improved L flange constitutes terminating action to the repetitive inspections. The actions would be required to be accomplished in accordance with the service documents described previously.

There are approximately 950 engines of the affected design in the worldwide fleet. The FAA estimates that 500 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours to perform the inspection and 45.4 work hours per engine to replace the forward flange if cracked, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$6,376 per engine. Based on current usage rates, each engine should undergo approximately 1 inspection per year. To date, approximately 4% of cases have been found with cracking. Based on these figures, the total annual cost impact of the proposed on U.S. operators is estimated to be \$242,000.

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:

Pratt & Whitney: Docket No. 98-ANE-31-AD.

Applicability: Pratt & Whitney (PW) JT9D-3A, -7, -7H, 7A, -7AH, -7F, -7J, -20, and -20J series turbofan engines, with Combustion Chamber Outer Casing (CCOC), part numbers (P/Ns) 644801, 693294, 709016, 729237, 729238, and 729239, installed. These engines are installed on but not limited to certain models of Boeing 747, Airbus A300, and McDonnell Douglas DC-10 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) 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 CCOC rupture due to cracking, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Perform initial on-wing ultrasonic inspections of the CCOC forward flange (L flange) fillet radius for cracking in accordance with PW Alert Service Bulletin (ASB) No. A6343 Revision 1, dated October 8, 1998, as follows:

(1) For engines that have not had the L Flange fillet radius eddy current inspected using the JT9D Engine Manual (P/N 646028, P/N 770407, P/N 770408, as appropriate) Revision No. 104; or Temporary Revision No. 72-6517, Temporary Revision No. 72-6334, or Temporary Revision No. 72-6206, all of which were superseded by manual Revision No. 104; at the last shop visit, inspect within 250 cycles in service (CIS) after the effective date of this AD, or the next shop visit, whichever occurs first.

(2) For engines that did have the L Flange fillet radius eddy current inspected using the JT9D Engine Manual (P/N 646028, P/N 770407, P/N 770408, as appropriate) Revision No. 104; or Temporary Revision No. 72-6517, Temporary Revision No. 72-6334, or

Temporary Revision No. 726206, all of which were superseded by manual Revision No. 104; at the last shop visit, inspect within 2,000 CIS, or the next shop visit after the effective date of this AD, whichever occurs first.

(b) Thereafter, ultrasonically inspect on-wing at intervals not to exceed 500 CIS since last on-wing inspection in accordance with PW Alert Service Bulletin (ASB) No. A6343 Revision 1, dated October 8, 1998, or 2000 cycles in service (CIS) since last in-shop ECI inspection, whichever occurs later.

(c) If a crack is found during on-wing inspection, remove the part from service, and replace with a serviceable part as follows:

(1) For cracks found to be over the inspection threshold limit, but less than 2 inches, remove within 5 CIS.

(2) For cracks found to be over the inspection threshold limit and equal to or greater than 2 inches, remove prior to further flight.

(d) If a crack in the L flange fillet radius of the CCOC is found during in-shop inspection, remove the CCOC and replace with a serviceable part, or replace the flange in accordance with PW SB No. 4482, Revision 1, dated July 8, 1976. Installation of an improved L flange in accordance with this SB constitutes terminating action to the repetitive inspection requirements of this AD.

(e) Inspect the CCOC L flange fillet radius during every CCOC shop visit in accordance with JT9D Engine Manual (P/N 646028, P/N 770407, P/N 770408, as appropriate) Revision No. 104 (or Temporary Revision No. 72-6517, Temporary Revision No. 72-6334, or Temporary Revision No. 72-6206, which were superseded by manual Revision No. 104); that details eddy current inspection procedures for the L flange fillet radius.

(f) For the purpose of this AD, a shop visit is defined as anytime the L flange is separated in the process of performing engine repair.

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

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

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

Issued in Burlington, Massachusetts, on December 15, 1998.

David A. Downey,

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

[FR Doc. 98-33747 Filed 12-18-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-105964-98]

RIN 1545-AW30

Intercompany Obligations**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation that clarifies the treatment of the transfer or extinguishment of rights under an intercompany obligation. The existing regulation has caused uncertainty concerning the tax treatment of such transactions. The proposed regulation affects corporations that are members of consolidated groups, their subsidiaries, and their shareholders.

DATES: Comments and requests for a public hearing must be received by March 22, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-105964-98), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-105964-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax-__regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Theresa A. Abell, (202) 622-7790; concerning submissions of comments, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background**

This document contains proposed amendments to § 1.1502-13(g) of the Income Tax Regulations. Section 1.1502-13(g) prescribes rules relating to the treatment of the transfer or extinguishment of rights under an intercompany obligation. An intercompany obligation is generally defined as an obligation between members of a consolidated group, but only for the period during which both parties are members of the group. The current regulation provides that if a

member of a consolidated group realizes an amount (other than zero) of income, gain, deduction, or loss upon the transfer or extinguishment of all or part of its remaining rights or obligations under an intercompany obligation, the obligation is treated as satisfied (and the transferor's basis in the property received is adjusted to reflect the satisfaction amount) and, if the obligation remains outstanding, it is treated as reissued as a new obligation.

The current regulation is, however, ambiguous regarding the form of the recast transaction, i.e., the deemed transaction that encompasses the satisfaction, reissuance, and actual transaction. Under one interpretation of the regulation, there is a potential that the form of the recast jeopardizes the tax-free treatment of common corporate restructuring transactions. While it is not clear the regulation produces such consequences, the IRS and Treasury believe that any such consequences would be inappropriate and unnecessary to achieve the objectives of the regulation. Accordingly, the IRS and Treasury propose to amend the regulation as described below.

Explanation of Provisions

The existing regulation does not apply to transactions in which the amount of income, gain, deduction, or loss realized is zero. This rule was intended to avoid application of the regulation to transactions in which preservation of gain or loss location, an objective of § 1.1502-13(g), would not be at issue. However, the determination of whether the amount of income, gain, deduction, or loss realized is zero might depend on the fair market value of property received in an exchange. The difficulty and manipulability of that valuation is a reason for the enactment of certain provisions of the original issue discount (OID) rules, particularly section 1274. To the extent that taxpayers were able to avoid the deemed satisfaction and reissuance rule by inaccurately maintaining that the amount of income, gain, deduction, or loss realized is zero, taxpayers could avoid those OID rules and could inappropriately shift gain or loss among members. The IRS and Treasury have concluded that the better and more administrable approach is not to condition the application of the regulation on a realization of some amount of income, gain, deduction, or loss other than zero. Accordingly, the regulation as proposed will apply to all transactions in which any amount is realized due to the transfer or extinguishment of rights in an intercompany obligation.

The IRS and Treasury believe the exception from the operation of this provision for transactions that will not have a significant effect on any person's Federal income tax liability for any year is unclear in its application and scope. Further, the exception offers little, if any, relief from the requirements of the provision. Accordingly, the exception is eliminated from the regulation.

The proposed regulation clarifies the form and timing of the recast applied to transactions subject to the regulation. In particular, it clarifies that the deemed satisfaction proceeds (rather than the obligation) are treated as transferred by the initial creditor in the actual transaction and then advanced by the transferee to the debtor in the deemed reissuance of the obligation. The proposed regulation includes an example to illustrate clearly the mechanics of the proposed regulation. It also includes certain conforming adjustments.

The proposed regulation retains the rule that the deemed satisfaction and reissuance amounts are determined under the principles of the OID provisions if the debt is transferred for property. The IRS and Treasury recognize that an alternate rule providing for a fair market value determination of the deemed satisfaction and reissuance amounts might (in theory) more accurately preserve location of economic gain or loss. In such an alternate regime, however, the inherent difficulty of valuing intercompany obligations would prove burdensome to both taxpayers and the IRS and may provide significant potential for abuse when member obligations are transferred. Certain provisions of the OID rules are intended to address the difficulty and manipulability of this valuation. Other developments in the tax law have recognized that issue price, as determined under the OID rules, is the surrogate for fair market value in the case of a debt obligation. For example, § 1.1001-1(g) provides that issue price is used in determining the amount realized from the receipt of a debt instrument.

For these reasons, and consistent with the objective of promoting single entity treatment of the group, the IRS and Treasury continue to believe that the use of the OID provisions is appropriate and desirable in determining the deemed satisfaction amount and the amount for which the obligation is deemed reissued. Accordingly, the regulation as proposed continues to use the OID provisions to determine both the amount repaid in the deemed satisfaction and the issue price of the

reissued obligation in cases involving the exchange of an intercompany obligation for cash or property.

In addition, the proposed regulation clarifies that the term "conversion" includes only conversions pursuant to the terms of the instrument.

Proposed Effective Date

The regulation is proposed to be effective on the date that the final regulation is published in the **Federal Register**. For purposes of determining the tax treatment of transactions undertaken prior to such effective date, taxpayers may rely on the form and timing of the recast transaction, as clarified by these proposed regulations. No inference is intended, however, as to the correct interpretation of the existing regulation.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations principally affect corporations filing consolidated Federal income tax returns. Available data indicates that many consolidated return filers are large companies (not small businesses). Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any written comments (preferably a signed original and eight copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting information. The principal author of this regulation is Theresa A. Abell of the Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and

Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.1502–13 also issued under 26 U.S.C. 1502.

Par. 2. Section 1.1502–13 is amended by:

1. Revising paragraphs (g)(3)(i)(A), (g)(3)(i)(B)(3), (g)(3)(ii)(A), and (g)(3)(iii), and removing paragraph (g)(3)(i)(B)(4).

2. Revising paragraph (g)(4)(i)(B).

3. Amending paragraph (g)(5) by:

a. Removing the language "Example 2" in each place it appears in paragraphs (d), (e) and (f) of Example 2 and adding "Example 3" in its place.

b. Removing the language "Example 3" in each place it appears in paragraphs (c) and (d) of Example 3 and adding "Example 4" in its place.

c. Removing the language "Example 5" in each place it appears in paragraph (c) of Example 5 and adding "Example 6" in its place.

d. Redesignating Examples 2, 3, 4 and 5 as Examples 3, 4, 5 and 6 and adding a new Example 2.

The revisions and additions read as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(g) * * *

(3) *Deemed satisfaction and reissuance of intercompany obligations*

(i) *Application*—(A) *In general.* If a member realizes an amount from the assignment or extinguishment of all or part of its remaining rights or obligations under an intercompany obligation, the intercompany obligation is treated for all Federal income tax purposes as satisfied under paragraph (g)(3)(ii) of this section and, if it remains outstanding (either as an intercompany obligation or a nonintercompany obligation), reissued under paragraph (g)(3)(iii) of this section. Similar principles apply under this paragraph (g)(3) if a member realizes an amount, directly or indirectly, from a comparable transaction (for example, a marking-to-market of an obligation or a bad debt deduction), or if an intercompany

obligation becomes an obligation that is not an intercompany obligation.

(B) * * *

(3) The amount realized is from the conversion of an obligation (under the terms of the instrument) into stock of the obligor.

(ii) *Satisfaction*—(A) *General rule.* If a creditor member sells an intercompany debt for cash, the debt is treated as satisfied by the debtor immediately before the sale for an amount equal to the amount of the cash. If the debt is transferred for property, the debt is treated as satisfied immediately before the transaction for an amount equal to the issue price (determined under section 1273 or section 1274) of a new debt issued on the date of the transaction, with identical terms, for such property. If this paragraph (g)(3) applies because the debtor or creditor becomes a nonmember, the debt is treated as satisfied for cash in an amount equal to its fair market value immediately before the debtor or creditor becomes a nonmember. If the debt is transferred for cash or property, the proceeds of the deemed satisfaction are treated as transferred by the creditor to the transferee of the debt in exchange for the cash or property. Similar principles apply to other transactions and to transactions involving intercompany obligations other than debt. For example, if a corporation assumes the debtor's liability in exchange for property of the debtor, the debt is treated as satisfied for an amount equal to the issue price (determined under section 1273 or section 1274) of a new debt issued on the date of the transaction, with identical terms, for such property. If, in a transaction to which this paragraph (g)(3) applies, the obligation is extinguished, including in a transaction in which the creditor and debtor become the same entity, the obligation is treated as satisfied for an amount equal to the issue price (determined under section 1273 or section 1274) of a new debt issued on the date of the transaction, with identical terms, to a third party, for property that is not publicly traded.

* * * * *

(iii) *Reissuance.* If an intercompany debt is transferred for cash or property, it is treated as a new debt (with a new holding period but otherwise identical terms) issued to the transferee in exchange for the proceeds of the deemed satisfaction as determined under paragraph (g)(3)(ii) of this section. If this paragraph (g)(3) applies because the debtor or creditor becomes a nonmember, the debt is treated as a new debt (with a new holding period but

otherwise identical terms) issued to the creditor for the deemed satisfaction proceeds. Similar principles apply to other transactions and to transactions involving intercompany obligations other than debt.

* * * * *

(4) * * *

(i) * * *

(B) *Exception.* This paragraph (g)(4) does not apply to an obligation if the obligation becomes an intercompany obligation by reason of an event described in § 1.108-2(e) (exceptions to the application of section 108(e)(4)).

* * * * *

(5) *Examples.*

* * * * *

Example 2. Nonrecognition transactions.

(a) *Facts.* On January 1 of Year 1, B borrows \$100 from S in return for B's note providing for \$10 of interest annually at the end of each year, and repayment of \$100 at the end of Year 5. B fully performs its obligations with the same tax consequences as described in paragraph (a) of Example 1. At the end of Year 3, S transfers the note to a newly formed subsidiary, Newco, in exchange for Newco stock. Section 351 applies to the exchange. The interest is adequate stated interest within the meaning of section 1274(c)(2) (determined on the date of the transfer). Neither B's note nor Newco's stock is publicly traded.

(b) *Deemed satisfaction and reissuance of note.* Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied for \$100 (the issue price of the reissued note, determined under section 1273(b)(4)) immediately before S's transfer of the note to Newco. Zero gain or loss is recognized by S and B on the deemed satisfaction of B's note. S is then treated as transferring the deemed proceeds of the satisfaction of the note (\$100) to Newco in exchange for the Newco stock. S's basis in the Newco stock is \$100. Under paragraph (g)(3)(iii) of this section, B is treated as reissuing the note to Newco for \$100. Newco's basis in B's note is \$100.

(c) *Intercompany obligation transferred in section 332 transaction.* The facts are the same as in paragraph (a) of this Example 2, except that S transfers the note to P in a complete liquidation under section 332. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied for \$100 (the issue price of the reissued note, determined under section 1273(b)(4)) immediately before S's transfer of the note to P. Zero gain or loss is recognized by S and B on the deemed satisfaction of the note. S is then treated as transferring the deemed proceeds of the satisfaction of the note, with its other assets, to P in complete liquidation. Under paragraph (g)(3)(iii) of this section, B is treated as reissuing the note to P for \$100. P's basis in the note is \$100.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98-32930 Filed 12-18-98; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-113694-98]

RIN 1545-AW59

Increase in Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of proposed rulemaking.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations providing guidance relating to the increase from \$3,500 to \$5,000 of the limit on distributions from qualified retirement plans that can be made without participant consent. This increase is contained in the Taxpayer Relief Act of 1997. The text of those temporary regulations also serves as a portion of the text of these proposed regulations. In addition, these proposed regulations propose the elimination, for all distributions, of the "lookback rule" pursuant to which the qualified plan benefits of certain participants are deemed to exceed this limit on mandatory distributions. These proposed regulations affect sponsors and administrators of qualified retirement plans, and participants in those plans. The text of those temporary regulations also serves as a portion of the text of these proposed regulations. **DATES:** Written comments and requests for a public hearing must be received by March 22, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-113694-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-113694-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs/ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Michael J. Karlan, (202) 622-6030 (not a toll-free

call); concerning submissions, Michael Slaughter, (202) 622-7190 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to the increase from \$3,500 to \$5,000 of the "cash-out limit" described in sections 411(a)(7), 411(a)(11), and 417(e)(1) of the Internal Revenue Code, as amended by section 1071 of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788 (1997).

The text of the temporary regulations also serves as a portion of the text of the proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

As also discussed in the preamble to the temporary regulations, § 1.411(a)-11(c)(3), interpreting the law prior to the enactment of TRA '97, provides that the written consent of a participant is required before the commencement of the distribution of any portion of the participant's accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than \$3,500. If the present value does not exceed \$3,500, the consent requirements are deemed satisfied, and the plan may distribute that portion to the participant as a single sum. The regulation further provides that, if the present value determined at the time of a distribution to the participant exceeds \$3,500, then the present value at any subsequent time shall be deemed to exceed \$3,500; this is commonly referred to as the "lookback rule." Section 1.417(e)-1(b)(2)(i) includes a parallel lookback rule.

The temporary regulations remove the lookback rule under section 411(a)(11) for most distributions, but preserve the rule for distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution is still payable.

These proposed regulations remove the lookback rule under §§ 1.411(a)-11(c)(3) and 1.417(e)-1(b)(2)(i). In accordance with section 417(e)(1), these proposed regulations also provide that, in the case of plans subject to sections 401(a)(11) and 417, consent is required after the annuity starting date for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of that present value. Where only a portion of an accrued benefit is being distributed,

this provision applies only to that portion (and not to the portion with respect to which no distributions are being made).

Under this removal of the lookback rule, the present value of a participant's nonforfeitable accrued benefit could be distributed without consent if the present value does not exceed \$5,000, even if the present value of the participant's nonforfeitable accrued benefit exceeded \$5,000 at the time of a previous distribution. Thus, if the present value of a participant's nonforfeitable accrued benefit previously had been \$6,000, but is presently \$4,000, these proposed regulations would permit the plan to be amended to permit the present value of that participant's nonforfeitable accrued benefit to be distributed without consent (provided that the distribution would not fail to satisfy section 417(e)(1)). The complete removal of the lookback rule described in these proposed regulations would become effective 90 days after the publication of final regulations.

Special Analyses

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

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and

place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Michael J. Karlan, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

§ 1.411(a)-7 also issued under 26 U.S.C. 411(a)(7)(B)(i). * * *

Par. 2. Section 1.411(a)-7 is amended by revising paragraphs (d)(4)(i) and (d)(4)(vi) to read as follows:

§ 1.411(a)-7 Definitions and special rules.
* * * * *

(d) *Rules relating to certain distributions and cash-outs of accrued benefits.* * * *

(4) *Certain cash-outs of accrued benefits.* (i) and (vi) [The text of proposed paragraphs (d)(4)(i) and (vi) is the same as the text of § 1.411(a)-7T(d)(4)(i) and (vi) published elsewhere in this issue of the **Federal Register**.]
* * * * *

Par. 3. Section 1.411(a)-11 is amended by revising paragraph (c)(3) to read as follows:

§ 1.411(a)-11 Restriction and valuation of distributions.
* * * * *

(c) * * *

(3) *Cash-out limit.* (i) Written consent of the participant is required before the commencement of the distribution of any portion of an accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than the cash-out limit in effect under paragraph (c)(3)(ii) of this section on the date the distribution commences. The consent requirements are deemed satisfied if such value does not exceed the cash-out limit, and the plan may distribute such portion to the participant as a single sum. Present value for this purpose

must be determined in the same manner as under section 417(e); see § 1.417(e)-1(d).

(ii) [The text of proposed paragraph (c)(3)(ii) is the same as the text of § 1.411(a)-11T(c)(3)(ii) published elsewhere in this issue of the **Federal Register**.]
* * * * *

Par. 4. Section 1.417(e)-1 is amended by revising the last sentence of paragraph (b)(2)(i) to read as follows:

§ 1.417(e)-1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.
* * * * *

(b) * * *

(2) * * * (i) * * * After the annuity starting date, consent is required for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity regardless of the amount of such present value.
* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 98-32929 Filed 12-18-98; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-120168-97]

RIN 1545-AW73

Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the due diligence requirements in determining eligibility for the earned income credit for paid preparers of federal income tax returns or claims for refund. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by March 22, 1999. Outlines of

topics to be discussed at the public hearing scheduled for Thursday, May 20, 1999, at 10 a.m. must be received by Thursday, April 29, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-120168-97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-120168-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at <http://www.irs.ustreas.gov/prod/tax—regs/comments.html>. The public hearing will be held in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, LaNita Van Dyke, (202) 622-7190; concerning the regulations, Marc C. Porter, (202) 622-4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by February 19, 1999. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information

may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.6695-2T. This information is required by the IRS to determine preparer due diligence compliance. This information will be used to avoid the imposition of the penalty imposed by section 6695(g) of the Internal Revenue Code. The collection of information is mandatory. The likely recordkeepers are individuals, business or other for profit institutions, and small businesses or organizations.

The collection of information in § 1.6695-2T is generally satisfied by completing: (1) the required information on the Checklist published in Notice 97-65 or the Form 8867, *Paid Preparer's Earned Income Credit Checklist*; and (2) the required Worksheet information on the *Earned Income Credit Worksheet* contained in the instructions to the Form 1040. The burden for the Checklist requirement is reflected in the burden estimate for Form 8867. The burden for the Worksheet requirement is reflected in the burden estimate for the *Earned Income Credit Worksheet* contained in the instructions to the Form 1040. Preparers may also choose to record the information necessary to complete the Checklist and Worksheet in their paper or electronic files (alternative method).

The information collections in this regulation were originally included in Notice 97-65 and have been approved by the Office of Management and Budget under control number 1545-1570.

The collection of information for preparers who choose to record the information required by the regulations in alternative paper or electronic form is as follows:

Estimated total annual recordkeeping burden: 507,136 hours.

Estimated average annual burden hours per recordkeeper: 5 hours 4 minutes (40 minutes per return or claim for refund, 7.6 returns per preparer).

Estimated number of recordkeepers: 100,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books and records relating to a collection of information must be retained as long as their contents may

become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 6695. The temporary regulations set forth due diligence requirements that paid preparers of federal income tax returns or claims for refund involving the Earned Income Credit (EIC) must meet to avoid imposition of the penalty under section 6695(g) for taxable years beginning after December 31, 1996. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the amount of time necessary to record and retain the required information will be minimal for those income tax return preparers that choose to use the Alternative Eligibility Record and Alternative Computation Record. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the

clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 20, 1999, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 29, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Marc C. Porter, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * * Section 1.6695-2 also issued under 26 U.S.C. 6695(g). * * *

Par. 2. Section 1.6695-2 is added to read as follows:

§ 1.6695-2 Preparer due diligence requirements for determining earned income tax credit eligibility.

[The text of proposed § 1.6695-2 is the same as the text of § 1.6695-2T published elsewhere in this issue of the **Federal Register**].

David S. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 98-33344 Filed 12-18-98; 8:45 am]

BILLING CODE 4830-01-U

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

Accessibility Guidelines for Outdoor Developed Areas; Meeting of Regulatory Negotiation Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Regulatory negotiation committee meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. This document announces the dates, times, and location of the next meeting of the committee, which is open to the public.

DATES: The committee will meet from Tuesday, January 19, 1999, to Friday, January 22, 1999, 8:30 a.m. to 5:00 p.m. each day.

ADDRESSES: The committee will meet at the Miami Beach Botanical Gardens, Meeting Room, 2000 Convention Center Drive, Miami Beach, Florida.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004-1111. Telephone number (202) 272-5434 extension 34 (Voice); (202) 272-5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request. This document is also available on the Board's web site (<http://www.access-board.gov/rules/outdoor.htm>).

SUPPLEMENTARY INFORMATION: In June 1997, the Access Board established a regulatory negotiation committee to

develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. (62 FR 30546, June 4, 1997). The committee will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by January 8, 1999, by calling (202) 272-5434 extension 34 (voice) or (202) 272-5449 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 98-33663 Filed 12-18-98; 8:45 am]

BILLING CODE 8150-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 152-0104b; FRL-6206-6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from steam enhanced crude oil production well vents, refinery process vacuum producing devices, refinery process unit turnaround, and polystyrene foam industry.

The intended effect of this action is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any

parties interested in commenting should do so at this time.

DATES: Written comments must be received by January 20, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Kern County Air Pollution Control District, 2700 M Street, Suite 290, Bakersfield, CA 93003.

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

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office [AIR-4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1197.

SUPPLEMENTARY INFORMATION: This document concerns Kern County Air Pollution Control District Rule 404, Particulate Matter Concentration—Valley Basin; Rule 408, Fuel Burning Equipment; Rule 411.1, Steam-enhanced Crude Oil Production Well Vents; Rule 414.2, Refinery Process Vacuum Producing Devices or Systems; Rule 414.3, Refinery Process Unit Turnaround; and Rule 414.4, Polystyrene Foam Manufacturing, submitted to EPA on May 25, 1995 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: November 9, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98-33736 Filed 12-18-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-6206-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a petition submitted by Aluminum Company of America (Alcoa), Pittsburgh, Pennsylvania, to exclude (or "delist"), on a one-time basis, certain solid wastes generated by its wastewater treatment plant and interred at the Stolle Landfill located in Sidney, Ohio from the lists of hazardous wastes contained in Subpart D of 40 CFR Part 261. This landfill was used exclusively by Stolle Corporation, a wholly-owned subsidiary of Alcoa, for disposal of its wastewater treatment plant (WWTP) filter cake from 1981 to 1992. This action responds to a "delisting" petition submitted under § 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 266, 268 and 273, and under § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be excluded from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: EPA is requesting public comments on this proposed decision. Comments must be received in writing by February 4, 1999. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision by filing a request with Robert Springer, Director, Waste, Pesticides and Toxics Division, at the address below, by January 20, 1999. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Two copies of any comments should be sent to Peter Ramanauskas, Waste Management Branch (DW-8J), U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

Requests for a hearing should be addressed to Robert Springer, Director, Waste, Pesticides and Toxics Division (D-8J), U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

The RCRA regulatory docket for this proposed rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call Peter Ramanauskas at (312) 886-7890 for appointments. The

public may copy material from the regulatory docket at \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Peter Ramanauskas at the address above or at (312) 886-7890.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in §§ 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have its wastes excluded, a petitioner must show that wastes generated at its facility do not meet any of the criteria for which the wastes were listed. See § 260.22(a)(1) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require EPA to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. See § 260.22(a)(2). Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste,

generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See § 261.3(a)(2)(iv) and (c)(2)(I), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to EPA on procedural grounds. *Shell Oil Co. v. EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). EPA plans to address issues related to waste mixtures and residues in a future rulemaking.

B. Approach Used To Evaluate This Petition

Alcoa's petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA tentatively agreed with the petitioner, pending public comment, that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.

EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that other factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, and considered the concentration of the constituents in the waste, the toxicity of the constituents, their tendency to migrate and to bioaccumulate, their persistence in the environment if released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. As Alcoa's waste is presently landfilled, EPA determined that the major exposure route of concern

would be ingestion of contaminated ground water. Therefore, EPA used a fate and transport model to predict the maximum concentrations of hazardous constituents that may be released from the petitioned waste and to determine the potential impact of Alcoa's petitioned waste on human health and the environment. Specifically, EPA used the estimated waste volume and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. The calculated receptor well concentrations were then compared directly to the health-based levels at an assumed risk of 10^{-6} used in delisting decision-making for the hazardous constituents of concern. The maximum concentrations detected in the leachate were then compared directly to the maximum allowable levels determined by the volume dependent dilution attenuation factor times the health-based level.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C (Parts 260 through 266 and 268). The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, should not pose a threat to human health or the environment.

EPA also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions which can provide significant additional information important to fully characterize the potential impact (if any) of the disposal of a petitioned waste on human health and the environment. To support the delisting of the Stolle WWTP filter cake described in its petition as EPA Hazardous Waste Numbers F006 and F019, groundwater samples expected to be representative of groundwater resources in the immediate vicinity of the Stolle landfill were used to assess impacts to groundwater.

From the evaluation of the delisting petition, proposed maximum allowable leachate concentrations were developed for a list of constituents by back-calculating from the delisting health-based levels through the proposed fate and transport model.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require EPA to provide notice and an

opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

Aluminum Company of America, Alcoa Corporate Center, 201 Isabella Street, Pittsburgh, Pennsylvania 15212-5858

A. Petition for Exclusion

Stolle Products [a.k.a. Stolle Plant #2, formerly a division of Stolle Corporation, a wholly-owned subsidiary of the Aluminum Company of America (Alcoa); currently a division of American Trim, L.L.C.], located at 1501 Michigan Street in Sidney, Ohio, fabricates, assembles, and finishes aluminum and steel automotive, appliance, and decorative products. The metal finishing operations, which consist of sulfuric acid anodizing, chemical conversion coating, and painting, generate wastewaters that are treated in an on-site wastewater treatment plant (WWTP) which ultimately generates a filter cake. Through 1987, metal finishing operations also included electroplating with rinsewater from the electroplating process discharged to the WWTP. The WWTP filter press sludge generated from this process is presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." and F019—"Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process." (40 CFR 261.31). F006 waste is listed for cadmium, hexavalent chromium, nickel, and complexed cyanide and F019 waste is listed for hexavalent chromium and complexed cyanide (40 CFR 261 Appendix VII).

Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 U.S.C. 6921(f), and § 260.22.

B. Background

On May 13, 1996, Alcoa petitioned EPA to exclude the estimated total volume of 16,772 cubic yards of WWTP filter press sludge previously disposed of in the Stolle landfill from the list of hazardous wastes contained in § 261.31 because it believed that the petitioned waste did not meet any of the criteria under which the waste was listed and that there were no additional constituents or factors that could cause the waste to be hazardous.

Subsequently, Alcoa provided additional information to complete its petition. In support of its petition, Alcoa submitted detailed descriptions of its manufacturing and wastewater treatment processes, a schematic diagram of the wastewater treatment process, and analytical testing results for representative samples of the petitioned waste, including (1) the hazardous characteristics of ignitability, corrosivity, and reactivity; (2) total oil and grease; (3) Toxicity Characteristic Leaching Procedure (TCLP, SW-846 Method 1311) analyses for volatile and semi-volatile organic compounds, herbicides, pesticides, polychlorinated biphenyls (PCBs), metals, fluoride, and cyanide (using deionized water instead of acid); (4) total sulfide, total cyanide and total fluoride; (5) total constituent analysis for 40 CFR 264 Appendix IX metals (plus hexavalent chromium for which F006 and F019 wastes are listed), VOCs, SVOCs, pesticides and herbicides, and PCBs.

Between 1981 and 1992, the facility's metal finishing operations, which consisted of sulfuric acid anodizing, chemical conversion coating, painting, and/or electroplating (through 1987) generated wastewaters which were routed to and treated in an on-site WWTP. The resulting filter cake was disposed of in the Stolle landfill. Since October 1992, filter cake generated during Stolle Plant #2 WWTP operation has been collected in roll-off containers for disposal off site at a RCRA Subtitle C permitted facility.

The Stolle Plant #2 WWTP is an industrial wastewater pretreatment facility which discharges treated water to the City of Sidney sanitary sewer system for final treatment in a Publicly Owned Treatment Works (POTW). Industrial waste streams produced during Stolle Plant #2 manufacturing processes and discharged to the WWTP may be generally characterized as (1) anodizing process rinse waters containing suspended and dissolved metal salts, acids, alkalies, surfactants and organic contaminants; (2) anodizing process dumps which include

concentrated acids and alkalies containing high levels of dissolved solids; (3) acid and alkali cleaner dumps and rinse water containing surfactants, wetting agents, phosphates, and organic contaminants; (4) hexavalent and total chromium wastes; (5) spent deionizer regenerants and softener backwash water containing dissolved solids, acids, and caustics; (6) spent dyes and; (7) miscellaneous plant wastes.

Treatment at the WWTP is a continuous operation. From 1981 to 1992 industrial wastewater discharged from Stolle Plant #2 would flow to a modulation lagoon which functioned as a holding/surge basin prior to treatment in the WWTP. The lagoon was used to equalize batch discharges and peak loading such that wastewater could be fed to the WWTP at a constant flow rate to maximize efficient operation of the WWTP. Wastewater gravity-flowed from the lagoon to the lime neutralization tank. Spent acid anodizing solution from the anodizing process, which was stored in a 20,000 gallon waste sulfuric acid tank, was slowly metered into the wastewater stream as it flowed from the lagoon to the lime neutralization tank. Lime slurry was used for neutralization and metals complexing to form metal hydroxide. The mixture overflowed the lime neutralization tank and gravity-flowed to two Lamella settlers consisting of Lamella clarifiers and flocculators. In the clarifiers, the metal hydroxides precipitated, flocculated, and settled. Settling properties were improved through polymer addition to the clarifiers. Treated effluent was then discharged to the Sidney sanitary sewer system.

The sludge precipitated in the Lamella clarifiers was pumped to a sludge thickener for solids concentration prior to dewatering. The thickener supernatant (overflow) flowed by gravity directly to the effluent discharge piping, while the thickened sludge flowed by gravity to a sludge pit. Sludge was drawn from the sludge pit and pumped to a plate-and-frame filter press (formerly a belt filter press from 1981 to 1983) for dewatering. The resulting filter cake (30 to 40 percent solids) was disposed of in Stolle's on-site landfill.

The landfill contains three trenches averaging approximately 570 feet in length by 15 feet in width with a 4 foot fill depth and five area fill cells of varying dimensions with an 8 foot fill depth. The trench and cell floors are comprised of indigenous silt/clay having a permeability range of 8.8×10^{-9} cm/sec to 1.2×10^{-8} cm/sec.

Once filled, all trenches and cells (except Cell #5) were capped with

approximately two feet of well-compacted soil of low permeability and were graded to prevent surface water ponding. A vegetated cover consisting of native grass was established. Cell #5 was closed in 1993 before it was completely full. The closure of Cell #5 began with placement of 220 tons of Type C rock fill in the cell followed by compaction to assure a stable subgrade prior to placing additional lifts of soil. Forty-eight tons of pozzalime were added to the cell bottom for additional stabilization. The remaining cell area was filled with 3,753 cubic yards of fill material in 6 to 8 inch lifts and compacted to at least 95% of standard proctor and plus or minus 3% of optimum moisture content as defined by ASTM D698 and Alcoa Engineering Standards.

Construction of an Ohio EPA approved landfill cap was completed in October, 1996. The engineered cap system consists of a 24-inch compacted clay layer immediately above the waste material. A 60 mil flexible membrane liner (FML) was placed over the compacted clay layer. A drainage layer consisting of high density polyethylene (HDPE) drainage netting and woven filtration geotextile was installed above the FML. The final cover consists of 24 inches of native soil obtained from an on-site borrow area followed by 6 inches of topsoil which was vegetated with indigenous grass. The cap system includes surface and subsurface drainage controls.

Alcoa submitted a signed Certification of Accuracy and Responsibility statement presented in 40 CFR 260.22(i)(12). The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate the estimated waste volume. EPA accepts Alcoa's estimate.

C. Waste Analysis

Alcoa performed a full 40 CFR 264 Appendix IX analytical scan and other analyses on the filter cake samples from the Stolle landfill, as well as on the groundwater samples from the monitoring well network associated with the landfill, less dioxins and furans (combustion or incineration processes were non-existent at Stolle Plant #2; consequently, dioxins and furans were not expected to be present in the filter cake and were not included on the analytical parameter list).

For Alcoa's petition, one filter cake composite sample was collected from each landfill sector (i.e. trench and cell). By collecting a composite sample from each landfill sector, the results of filter cake sampling are representative of filter cake variability over time since each

trench and cell contains filter cake generated over a one to two year period. One composite filter cake sample was prepared for each of the eight landfill sectors. Composite samples consisting of material retrieved from four soil borings per sector were analyzed for Appendix IX constituents and other constituents. Composite filter cake samples collected from landfill sectors 1, 3, 6, and 8 were not analyzed for pesticides/PCBs or herbicides as per agreement with the EPA.

To quantify the filter cake total constituent and leachate concentrations, Alcoa used the following SW-846 Methods: 6010 for antimony, barium, beryllium, cadmium, chromium, cobalt, copper, nickel, silver, tin, vanadium, and zinc; 7060 for arsenic; 7421 for lead; 7471 for total mercury and 7470 for leachate mercury; 7740 for selenium; 7841 for thallium; 3060/7196 for hexavalent chromium; 9010 for cyanide

(total and complexed); 9030 for sulfide; 8080 for PCBs; 8080/8140 for pesticides; 8150 for herbicides; 8240 for volatile organic compounds; and 8270 for semi-volatile organic compounds. EPA Method 340.2 was used to determine fluoride concentration. Alcoa used these methods along with the Toxicity Characteristic Leaching Procedure (TCLP, SW-846 Method 1311) to determine leachate concentrations of metals, cyanide, fluoride, herbicides, pesticides, PCBs, volatile organic compounds, and semi-volatile organic compounds. Using SW-846 Methods 9070/9071, Alcoa determined that the samples of the petitioned waste had oil and grease contents below detectable limits. If the total oil & grease concentrations had been greater than or equal to 1%, the Oily Waste Extraction Procedure, Method 1330, would have been required. Characteristic testing of

the filter cake samples included analysis of ignitability (SW-846 Method 1010) and corrosivity (SW-846 Method 9045). Samples were not analyzed for reactive cyanide and reactive sulfide as total concentrations of cyanide and sulfide did not exceed 250 ppm and 500 ppm respectively.

Table 1 presents the maximum total and leachate concentrations for 15 metals, total cyanide, total sulfide, and fluoride.

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by Alcoa when using the appropriate SW-846 methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, i.e., the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising detection limits.)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS¹ WWTP FILTER CAKE

Inorganic constituents	Total constituent analyses (mg/kg)	TCLP leachate analyses (mg/l)
Antimony	25.0	<0.025
Arsenic	13.0	0.011
Barium	630.0	0.120
Beryllium	1.2	<0.001
Chromium (total)	3300.0	0.004
Chromium (hexavalent)	1.5	NA
Cobalt	34.0	0.019
Copper	1500.0	0.070
Lead	110.0	<0.001
Mercury	0.29	<0.0002
Nickel	2700.0	7.7
Selenium	0.87	<0.005
Tin	240.0	<0.053
Vanadium	13.0	0.008
Zinc	5700.0	0.590
Cyanide (total)	<2.1	<0.01
Sulfide (total)	16.0	NA
Fluoride	13.5	0.34

¹ These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

<Denotes that the constituent was not detected at the detection limit specified in the table.

NA Denotes that the constituent was not analyzed.

Alcoa analyzed the samples of petitioned waste for 55 volatile and 115 semi-volatile organic compounds. Table 2 presents the maximum total and leachate concentrations for all detected organic constituents in Alcoa's waste samples.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS¹ WWTP FILTER CAKE

Organic constituents	Total constituents analyses (mg/kg)	TCLP leachate analyses (mg/l)
Acetone	0.34	0.240
Methylene Chloride	0.016	0.028
Tetrachloroethene	0.006	<0.005
Bis(2-ethylhexyl)phthalate	2.5	0.001

¹ These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

<Denotes that the constituent was not detected at the detection limit specified in the table.

To support the delisting of the WWTP filter cake described in its petition as EPA Hazardous Waste Numbers F006 and F019, groundwater samples expected to be representative of groundwater resources in the immediate vicinity of the Stolle landfill were collected and analyzed to assess impacts, if any, to groundwater. A total of six monitoring wells in the landfill monitoring network were sampled quarterly for twelve quarters, with the exception of the first and second quarterly sampling events for which only four monitoring wells were sampled. Each groundwater sample from the first six quarters (with the exception of the second quarterly sampling event) was analyzed for the same set of Appendix IX parameters as the landfill samples. The second quarter and the remaining six quarters of groundwater samples were collected in support of landfill closure and were therefore analyzed for a reduced set of metals which included aluminum, cadmium, calcium, chromium (total and hexavalent), iron, lead, manganese, nickel, sodium, and zinc; and reduced sets of volatile and semi-volatile organic compounds. Analysis for PCBs, pesticides, herbicides, cyanide, fluoride, and sulfide was eliminated after the sixth quarter of data. Analysis for volatile and semi-volatile organic compounds was not done after the seventh quarter of data. These changes were made with approval by the Ohio Environmental Protection Agency (OEPA).

To quantify groundwater concentrations, Alcoa used the

following SW-846 Methods: 6010 for barium, cobalt, copper, nickel, tin, and zinc; 7041 for antimony; 7060 for arsenic; 7421 for lead; 7740 for selenium; 7841 for thallium; 7091 for beryllium; 7131 for cadmium; 7191 for chromium; 7761 for silver; 7911 for vanadium; 7470 for mercury; 8240 for VOCs; 8270 for SVOCs; 8080 for PCBs; 8080/8140 for pesticides; 8150 for herbicides; 3060/7196 for hexavalent chromium; 9010 for cyanide; and 9030 for sulfide. EPA Method 340.2 was used for fluoride analysis. Table 4 presents maximum groundwater concentrations for organic and inorganic constituents.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with the petition binds the petitioner to present truthful and accurate results.

D. EPA Evaluation

EPA has reviewed the sampling procedures used by Alcoa and has determined that they satisfy EPA criteria for collecting representative samples.

Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. EPA, therefore, evaluated Alcoa's petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for ground water contamination from wastes that are landfilled. See 56 *FR* 32993 (July 18, 1991), 56 *FR* 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and

the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in ground water at a compliance point (i.e., a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground-water recharge for a specific volume of waste. The DAFs generated using the EPACML vary from a maximum of 100 for smaller annual volumes of waste (i.e., less than 1,000 cubic yards per year) to DAFs approaching ten for larger annual volume wastes (i.e., 400,000 cubic yards per year). EPA requests comments on the use of the EPACML as applied to the evaluation of Alcoa's waste.

Typically, EPA uses the maximum annual waste volume to derive a petition-specific DAF. The DAFs are currently calculated assuming an ongoing process that generates wastes for 20 years. Therefore, the DAF was adjusted as appropriate for a one-time exclusion. Alcoa's maximum waste volume of 16,772 cubic yards is adjusted by a divisor of 20 to estimate a maximum annual waste volume of 839 cubic yards per year. This adjusted waste volume corresponds to a DAF of 100. In EPA's evaluation, a DAF of 100 times the health based level used in delisting decision making was used to determine the maximum allowable leachate concentration for the waste in the Stolle landfill (see Table 3).

TABLE 3.—EPACML: MAXIMUM ALLOWABLE LEACHATE CONCENTRATIONS WWTP FILTER CAKE

Inorganic and organic constituents	TCLP leachate analyses (mg/l)	Levels of regulatory concern
Arsenic	0.011	5.0
Barium	0.120	200.0
Chromium	0.004	10.0
Cobalt	0.019	³ 210.0
Copper	0.070	³ 140.0
Nickel	7.700	^{2,3} 70.0
Vanadium	0.008	20.0
Zinc	0.590	1000.0
Fluoride	0.340	400.0
Acetone	0.240	400.0
Methylene Chloride	0.028	0.5
Bis(2-ethylhexyl)phthalate	0.001	0.6

¹ See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," December 1994, located in the RCRA public docket for today's notice.

² The Maximum Contaminant Level promulgated under the Safe Drinking Water Act was vacated and remanded and subsequently removed from the Code of Federal Regulations on June 29, 1995 (60 *FR* 33926).

³ Based on the oral reference dose from "Risk-Based Concentration Table, April 1998", and the equation used for calculating delisting health-based levels found in the document referenced below.

Note: See the RCRA public docket for today's notice for the specific reference doses and the calculation of the health-based levels of regulatory concern.

For inorganic constituents, the maximum reported leachate concentrations of arsenic, barium, chromium, cobalt, copper, nickel, vanadium, zinc, and fluoride in the WWTP filter cake were well below the health-based levels of concern used in delisting decision-making. EPA did not evaluate the mobility of the remaining inorganic constituents (i.e., antimony, beryllium, cadmium, chromium (total and hexavalent), lead, mercury, selenium, silver, thallium, tin, and cyanide) from Alcoa's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 1). EPA believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected when using the

appropriate analytical method with an adequate detection limit, EPA assumes that the constituent is not present and therefore does not present a threat to human health or the environment.

EPA also evaluated the potential hazards of the organic constituents detected in the TCLP extract of Alcoa's samples (i.e., acetone, methylene chloride, Bis(2-ethylhexyl)phthalate). The maximum detected leachate concentrations in Alcoa's waste were significantly below the respective levels of concern.

After reviewing Alcoa's processes, EPA accepts Alcoa's analysis that no other hazardous constituents, other than those tested for, are likely to be present in the waste, and that any migration of hazardous constituents from the waste would result in concentrations below delisting health-based levels of concern. In addition, on the basis of test results and information provided by Alcoa

pursuant to § 260.22, EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity.

In its evaluation of Alcoa's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersal, EPA believes that no appreciable air releases are likely from Alcoa's waste as the landfill has been capped. Therefore, there is no substantial present or potential hazard to human health from airborne exposure to constituents from Alcoa's petitioned waste.

EPA examined potential impacts to the groundwater in the vicinity of the landfill through evaluation of Alcoa's submitted groundwater data (see Table 4).

TABLE 4.—MAXIMUM GROUNDWATER CONSTITUENT CONCENTRATIONS¹ LANDFILL GROUNDWATER MONITORING WELLS

Inorganic and organic constituents	Total constituent analyses (mg/l)	Health based level (mg/l)
Acetone	0.011	4.0
Aluminum	2.7	⁶ 35.0
Antimony	² 0.022	0.006
Arsenic	0.027	0.05
Barium	0.62	2.0
Beryllium	² 0.018	0.004
Bis(2-ethylhexyl)phthalate	³ 0.054	0.006
Carbon Disulfide	0.022	4.0
Cobalt	0.015	⁶ 2.1
Chromium	² 0.66	0.1
Hexavalent Chromium	0.023	0.1
Copper	0.018	1.3
Cyanide	0.013	0.2
Ethyl Benzene	0.012	0.7
Fluoride	2.8	4.0
Iron	5.3	⁶ 10.5
Lead	0.005	0.015
Manganese	0.4	⁶ 0.7
Naphthalene	0.001	1.0
Nickel	² 1.3	0.7
Phenol	0.14	20.0
Tin	0.094	⁶ 21
Thallium	⁵ 0.003	0.002
Vanadium	0.011	0.2
Vinyl Chloride	⁴ 0.002	0.002
Xylenes	0.022	10.0
Zinc	4.1	7.0

¹ These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

² Statistical outlier.

³ Less than 10 times equipment blank concentration; therefore, considered non-detect.

⁴ Less than the practical quantitation limit.

⁵ Detection limit.

⁶ Based on the oral reference dose from "Risk-Based Concentration Table, April 1998", and the equation used for calculating delisting health-based levels found in the document referenced below.

Note: See the RCRA public docket for today's notice for the specific reference doses and the calculation of the health-based levels.

For inorganic constituents, elevated levels of chromium, nickel, beryllium, and antimony were each detected on a single occasion. Elevated levels of

chromium and nickel were detected only during the second quarter sampling event. Elevated levels of beryllium and antimony were detected only during the

fourth quarter sampling event. Statistical tests determined that the elevated points were statistical outliers that did not fit the distribution of the

rest of the data and were not representative of actual groundwater conditions. During the fourth quarter, thallium was detected at the detection limit and one-thousandth of a mg/L greater than the HBL. Thallium was not detected in any of the groundwater samples during the first six quarters of groundwater sampling. Therefore, there are no apparent trends in the data to indicate that thallium is actually present in the groundwater.

Bis(2-ethylhexyl)phthalate was detected at an elevated level during the third quarter sampling event. Because this compound does not leach from the landfill filter cake at appreciable levels, and is a common field contaminant, a statistical test was performed which determined that the elevated level is a statistical outlier. Bis(2-ethylhexyl)phthalate was also detected at an elevated level during the fifth quarter sampling event. The associated method blank was found to have 6 ppb of this common field contaminant. Following standard laboratory data validation techniques for common contaminants, the level was qualified and considered non-detect because it was less than ten times the concentration detected in the associated equipment blank. During the sixth quarter sampling event, vinyl chloride was detected at a concentration equal to the MCL. However, this result was qualified as estimated as it was less than the practical quantitation limit.

Analytical results indicate no adverse impact to groundwater quality as a result of the disposal of filter cake in the Stolle landfill. Alcoa continues to monitor the groundwater through the landfill monitoring well network under regulation of the OEPA.

EPA also considered the potential impact of the petitioned wastes via a surface water route. The Stolle landfill was constructed with a perimeter embankment to prevent lateral migration of water. Clay, with a maximum permeability of 10^{-6} cm/sec, was used for embankment construction. In addition, as a requirement by the OEPA, Stolle was required to construct an underdrain system for collection and discharge of surface water to prevent ponding. Since 1984, all water collected via the underdrain system has been released to the Sidney sanitary sewer system for treatment. EPA believes that containment structures at the Stolle landfill, including the engineered cap, can effectively control surface water run-off. Furthermore, the concentrations of any hazardous constituents in the run-off will tend to be lower than the extraction procedure test results reported in today's notice because of the

aggressive acidic media used for extraction in the TCLP. EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution/attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of the solubility of a toxic constituent in water, and are indicative of the fraction of the constituents that may be mobilized in surface water, as well as ground water. The reported TCLP data shows that the constituents that might leach from Alcoa's waste to surface water are likely to be below the health-based levels of concern. EPA, therefore, concludes that Alcoa's waste is not a significant hazard to human health or the environment via the surface water exposure pathway.

E. Conclusion

Based on descriptions of the process from which the petitioned waste is derived, descriptions of Alcoa's wastewater treatment process, and analytical characterization of the petitioned waste, EPA believes that Alcoa has successfully demonstrated that the petitioned waste is not hazardous. EPA, therefore, proposes to grant a one-time exclusion to Alcoa for its WWTP filter cake described in its petition as EPA Hazardous Waste Nos. F006 and F019. If made final, the proposed exclusion will apply only to the approximately 16,772 cubic yards of petitioned waste present in the Stolle landfill.

III. Effect on State Authorizations

This proposed exclusion, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, may impose more stringent regulatory requirements than EPA, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States (e.g., Louisiana and Illinois) are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting

authorization, Alcoa must obtain delisting authorization from that State before the waste may be managed as nonhazardous in the State.

IV. Effective Date

This rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as non-hazardous. There is no additional impact, therefore, due to today's proposed rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a

significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511, 44 USC 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the

least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Children's Health Protection

Under Executive Order ("EO") 13045, for all "significant" regulatory actions as

defined by EO 12866, EPA must provide an evaluation of the environmental health or safety effect of a proposed rule on children and an explanation of why the proposed rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposal is not a significant regulatory action and is exempt from EO 13045.

List of Subjects in 40 CFR Part 261

Environmental Protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 24, 1998.

Robert Springer,

Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

Table 1.—Wastes Excluded From Non-Specific Sources

Facility	Address	Waste description
* Aluminum Company of America.	* 750 Norcold Ave., Sidney, Ohio 45365.	* 1. Wastewater treatment plant (WWTP) sludges generated from the chemical conversion coating of aluminum (EPA Hazardous Waste No. F019) and WWTP sludges generated from electroplating operations (EPA Hazardous Waste No. F006) and stored in an on-site landfill. This is a one-time exclusion for approximately 16,772 cubic yards of landfilled WWTP filter cake. This exclusion was published on [insert publication date of the final rule]. 2. The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): Arsenic—5; Barium—200; Chromium—10; Cobalt—210; Copper—140; Nickel—70; Vanadium—20; Zinc—1000; Fluoride—400; Acetone—400; Methylene Chloride—0.5; Bis(2-ethylhexyl)phthalate—0.6. 3. (a) If, anytime after disposal of the delisted waste, Alcoa possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in Condition (2) is at a level in the leachate higher than the delisting level established in Condition (2), or is at a level in the ground water or soil higher than the health based level, then Alcoa must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

Table 1.—Wastes Excluded From Non-Specific Sources—Continued

Facility	Address	Waste description
*	*	<p>(c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. The facility shall have 10 days from the date of the Regional Administrator's notice to present such information.</p> <p>(d) Following the receipt of information from the facility described in paragraph (c) or (if no information is presented under paragraph (c) the initial receipt of information described in paragraph (a)), the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.</p>
*	*	*
*	*	*
*	*	*

[FR Doc. 98-33710 Filed 12-18-98; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION

46 CFR Parts 514 and 520

[Docket No. 98-29]

Carrier Automated Tariff Systems

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to add new regulations establishing the requirements for carrier automated tariff systems in accordance with the Shipping Act of 1984, as modified by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998. At the same time, the Commission is repealing its current rules regarding tariffs and service contracts at 46 CFR part 514.

DATES: Submit comments on or before January 20, 1999.

ADDRESSES: Address all comments concerning this proposed rule to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, (202) 523-5740

and
Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, (202) 523-5796

SUPPLEMENTARY INFORMATION: The Ocean Shipping Reform Act of 1998 ("OSRA"),

Pub. L. 105-258, 112 Stat. 1902, amends the Shipping Act of 1984 (46 U.S.C. app. sec. 1702 *et seq.*) ("1984 Act") in several areas, significantly altering the manner by which the United States regulates international ocean shipping. One of the most noteworthy changes is in the treatment of common carrier tariffs, the publications which contain the rates and charges for their transportation services. Currently, common carriers and conferences file their tariffs with the Federal Maritime Commission's ("FMC" or "Commission") Automated Tariff Filing and Information System ("ATFI"). Under OSRA, carriers no longer have to file with the Commission, but are required to publish their rates in private, automated tariff systems. (Section 8(a)(1) of the 1984 Act). These tariffs must be made available electronically to any person, without limits on time, quantity, or other such limitation, through appropriate access from remote locations, and a reasonable charge may be assessed for such access, except for Federal agencies. (Section 8(a)(2)). In addition, the Commission is charged with prescribing the requirements for the "accessibility and accuracy" of these automated tariff systems. The Commission also can prohibit the use of such systems, if they fail to meet the requirements it establishes. (Section 8(g)).

The Commission is, accordingly, proposing new regulations at 46 CFR part 520, to implement the changes occasioned by OSRA. In addition, the Commission is proposing to remove existing part 514, which deals mainly with the filing of tariffs in ATFI.

In anticipation of the passage of OSRA, the Commission published a notice of inquiry ("NOI") in the **Federal Register** on July 2, 1998, Docket No. 98-10, *Inquiry Into Automated Tariff Filing Systems as Proposed by the Pending*

Ocean Shipping Reform Act of 1998.

The Commission sought comments from the ocean transportation industry and the general public on how best to establish requirements for carriers' automated tariff systems. To this end, the Commission proposed fifteen questions to better focus discussion on the proper areas. The Commission subsequently received comments from eighteen commenters, representing all segments of the ocean transportation industry. Several of these commenters were trade associations representing substantial memberships.

These comments proved useful to the Commission in preparing this proposed rule. Although there was no unanimity among commenters, there was general consensus on some issues. For example, most commenters agreed that tariff information should be retained for 5 years and that there should be some standardization of tariff information. Moreover, some comments enabled the Commission to better focus its efforts in one direction or another.

One of the primary functions of the publication of tariffs is to provide the shipping public with accessible and reliable information on the price and service options to move particular commodities from point A to point B. Consistent with OSRA's common carriage principles, shippers should be able to use this information to compare competing carriers' offerings and to assess whether they are being unreasonably discriminated against vis-à-vis their competitors. In addition, public tariff information enables carriers to monitor their competitors and to gain a complete picture of the marketplace in a particular trade.

An equally important function of tariff publication is to permit the Commission to monitor the rate activity of carriers and conferences. In light of

the fact that OSRA continues to grant antitrust immunity for collective ratemaking, the ability to monitor collectively-established rates remains particularly important. The Commission also needs to be able to monitor carrier rate activity to ensure that the prohibited acts in section 10 of the 1984 Act are not violated. In this regard, the Commission will always need a historical record of rate activity, commensurate with the five year statute of limitations in the 1984 Act. In addition, the ability to monitor the rate activity of controlled carriers is crucial to the Commission's enforcement of the controlled carrier provisions of the 1984 Act.

The proposed rule is an attempt to reconcile these basic purposes of tariff publication with the relative discretion Congress has granted carriers to develop their own automated tariff systems. The report of the Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 61, 105th Cong., 1st Sess. (1997) ("Committee Report"), is instructive in this regard. The Committee noted that innovative private sector approaches, such as World Wide Web pages, should be encouraged, stating that common carriers should be free to develop their own means of tariff publication. Committee Report at 23. Although the Committee reiterated that there should be no government restraints on the design of a private tariff publication system, it also stated that such systems must assure the integrity of the common carrier's tariff and the tariff system as a whole and provide the appropriate level of public access to tariff information. *Id.* The Committee also stated that tariff information should be "simplified and standardized." *Id.* The Committee further noted that the Commission will retain its authority to suspend or prohibit the use of tariffs found to violate the 1984 Act or other United States shipping laws. *Id.* at 22-23.

The proposed rule attempts to meld the various Congressional directives on OSRA and its legislative history to produce tariff publication requirements that fully comport with the letter and spirit of OSRA. It should enable common carriers to present their pricing information in a variety of ways, while still allowing shippers and the Commission meaningful access to accurate information. A specific section-by-section analysis of the proposed rule follows.

Section 520.1 Scope and Purpose

This section notes that part 520 contains the regulations governing the publication of tariffs in automated

systems by common carriers and conferences in the United States waterborne foreign commerce, pursuant to the changes occasioned by OSRA. In addition, this section sets forth the four basic purposes of the part, to enable: (1) Shippers and the public to obtain reliable and useful rate information; (2) carriers and conferences to meet their publication requirements; (3) the FMC to ensure that tariffs are accurate and accessible and to protect against section 10 violations; and (4) the FMC to monitor activities of controlled carriers subject to section 9 of the 1984 Act.

Section 520.2 Definitions

This section contains many of the definitions that currently appear at 46 CFR 514.2. Some of these have been updated to reflect changes to the 1984 Act's definitions by OSRA. These include: "common carrier," "controlled carrier," "forest products," "loyalty contract," "ocean transportation intermediary," and "shipper." In addition, new definitions are proposed for "Act," "conference," "effective date," "Harmonized System," "publication date," "retrieval," "tariff rate item ("TRI")," "tariff number," and "TRI number." Modifications have also been made to some of the definitions that have been carried forward so that they comport with changes made elsewhere in the proposed rule.

Section 520.3 Publication Responsibilities

This section sets forth the basic requirement that all common carriers and conferences must publish their tariffs in automated tariff systems, but also notes that they may use agents to meet this responsibility. In addition, proposed § 520.3(b) requires conferences to publish in their systems independent action and open rates offered by their members.

Section 520.3(c) requires that certain basic information must be provided to the Commission prior to a carrier or conference initiating service under an automated tariff. This information includes the organization's legal name, trade name, address, contact, tariff location, publisher, and type of entity. This information is necessary to enable the Commission to meet its responsibilities under OSRA, and must be updated whenever any changes occur. Carriers and conferences can provide this information by submitting Form FMC-1, or by entering the information through an interactive program on the Commission's home page.

Section 520.3(d) provides that the Commission will publish on its website

a listing of the locations of all carrier and conference tariffs. This should enable the general public to find a particular carrier's tariff by simply visiting an all-inclusive site. The Commission specifically requests comments on its proposal to publish this list on the website.

Section 520.4 Tariff Contents

Section 520.4(a) sets forth the general contents for all tariffs published pursuant to this part. This provision does not prescribe a particular design or structure, but does prescribe what must be included in tariffs. The first six items are specifically required by section 8(a)(1) of the 1984 Act. In addition, all tariffs are required to contain an organization record, a tariff record, and tariff rules, while commodity tariffs must also contain commodity descriptions and tariff rate items. Carriers and conferences are otherwise free to structure their tariff publications as they see fit.

The organization record contains basic information about the organization which is publishing the tariff. This includes its: name, assigned number, agreement number, type, address and phone number, and names of affiliates to conferences or agreements. An organization will have only one organization record, which it can use with the various tariffs it may publish.

The tariff record contains information unique to each tariff and includes: Organization name and number, tariff number, tariff title, tariff type, origin and destination scope, contact person and address, and any default measurements and currency units.

Section 520.4(c) does not require tariffs to contain a lengthy set of prescribed rules with very specific contents. Instead, carriers or conferences must simply publish any rule that affects the application of their tariffs. If they adopt rules addressing certain specified subject areas, they are only required to use specific titles for the rules and are free to draft their particular contents in whatever manner they deem appropriate.

Section 520.4(d) requires each separate commodity in a tariff to have a corresponding and unique 10-digit numeric code. Although tariff publishers can use any coding pattern they choose, they are encouraged to use the United States Harmonized Tariff Schedule. In addition, publications must contain a commodity index representing the commodities covered by the tariff.

A tariff rate item ("TRI") is the single freight rate in effect for the transportation of cargo under a specified

set of transportation conditions. Section 520.4(e) sets forth the basic requirements for what must be contained in a TRI. In addition, § 520.4 allows publishers to define and create location groups and requires inland rate tables if carriers provide intermodal transportation at combination rates. Lastly, this section requires conference tariffs to contain specific instructions concerning shipper requests and complaints.

Section 520.5 Standard Tariff Terminology

This section states that the Standard Terminology Codes set forth in appendix A shall be used by tariff publishers. These codes reflect existing industry usage and merely carry forward a standard language for certain items, consistent with Congress' direction that tariff information should be simplified and standardized. Committee Report at 18. The Commission does not believe that this list is necessarily all-inclusive or will remain static, and will, therefore, entertain requests for changes on a case-by-case basis. If the Commission adopts a suggested change, it will provide notice on its web page.

Section 520.5(b) provides that tariffs must use points or locations that appear in the National Imagery and Mapping Agency gazetteer and that ports used should appear in the World Port Index.

Section 520.6 Retrieval of Information

This section sets forth the requirements and procedures by which retrievers can obtain information from a tariff publication. These requirements are proposed by the Commission in order to meet OSRA's requirement that tariff information be accessible to the public and provide, we believe, a minimal but reasonable degree of accessibility. As an initial matter, tariffs must present users with a tariff selection option or the capability to select an object group, e.g. rules. Tariffs must also provide the capability to search for a commodity by text search or number search. Retriever should also be able to enter all 14 numbers to directly access a specific tariff rate item.

If retrievers select a specific object group, they should be presented with a list of objects within the group or a search mechanism to locate an object within the group. In addition, § 520.5(e) provides that the minimum rate calculation capability for tariffs will be a calculated basic ocean freight ("BOF") (which would include certain adjustments for minimum quantities, quantity discounts, etc.) and a list of all assessorial charges that apply to the retriever-entered parameters. This

should enable shippers to ascertain the true cost of their transportation movement, without requiring carriers to calculate a "bottom-line" freight rate. While "bottom-line" calculations would certainly be a desirable feature of any public tariff system, and have been a requirement in ATFI, the Commission believes that requiring such capabilities would not be consistent with Congressional intent.

Section 520.7 Tariff Limitations

This section contains certain proscriptions on tariffs not otherwise contained in the rule. As a general matter, tariffs must be clear and definite, in English, must not cross-reference other tariffs, nor be duplicative. In addition, carriers and conferences must inform BTCL whenever an existing tariff is canceled.

This section also contains various proscriptions that were previously contained in tariff rules and are deemed still to be relevant. These include subsections addressing: rate applicability, minimum quantity rates, green salted hides, conferences, overcharge claims, and returned cargo.

Section 520.8 Effective Dates

This section restates the basic statutory proscription that new or initial rates or rates resulting in an increased cost to a shipper may not become effective before 30 calendar days after publication. However, rates for the transportation of United States Department of Defense cargo may be effective upon publication as may changes in rates that result in a decrease in cost to a shipper. In addition, the following amendments are permitted upon publication: (1) Those resulting in no change in cost to a shipper; (2) cancellation of a tariff due to cessation of service; (3) addition of certain ports or points to existing groupings; and (4) changes in charges over which the carrier has no control.

Section 520.9 Access to Tariffs

This section sets forth the technical requirements for providing access to automated tariffs systems. First, carriers and conferences must provide public access by way of a personal computer by either dial-up connection via public switched telephone networks ("PSTN") or the Internet. Various requirements relating to each type of connectivity are presented. FMC access must also be via dial-up connection over PSTNs or a connection over the Internet. In addition, any recurring fees shall be the responsibility of the publisher, but the Commission will be responsible for

long-haul charges for PSTN calls initiated by it.

Section 520.9(e) reiterates the statutory proscriptions that: (1) Tariffs must be made available to any person without limits as to time, quantity, or other limitation; (2) carriers do not have to provide terminals for remote access; and (3) carriers may assess reasonable fees for access, but not against Federal agencies, including the FMC; and further states that tariff systems must contain user instructions. Lastly, § 520.9(g) requires carriers to provide the FMC documentation and a requested number of user identification and passwords. This will enable the Commission to meet its responsibilities under the 1984 Act.

Section 520.10 Integrity of Tariffs

In an effort to ensure the integrity of individual tariffs and of the tariff system as a whole, this section requires carriers to maintain data in their tariff publication systems for 5 years from the date the information is superseded, and to provide an on-line access to such data. This is consistent with the five-year statute of limitations for Commission civil penalty actions set forth in section 13(f) of the 1984 Act. In addition, tariffs shall provide an access date capability, so that data in effect on a specified date can be retrieved. Without such capability, it would be impossible for the shippers or the Commission to ascertain accurate rate information concerning past shipments. Carriers must also provide BTCL with a written certification from an officer that the information in their tariffs is true and accurate and that no unlawful alterations will be permitted. The Commission is proposing to accept this procedure in lieu of mandating particular systems for ensuring tariff integrity and security. This section further notes that the Commission will periodically review published tariff systems and will prohibit use of systems that fail to meet the requirements of this part. To aid in this endeavor, carriers must provide the Commission reasonable access to their systems and records in order to conduct reviews.

Section 520.11 Non-Vessel-Operating Common Carriers

This section carries forward and gathers in one place various provisions relating to NVOCCs that were spread throughout part 514. The financial responsibility requirements and agent for service of process have been taken from 46 CFR 514.15(b)(24) and the co-loading provision comes from 46 CFR 514.5(b)(14). The proposed rule essentially carries these provisions

forward, with minor modifications. The Commission may address at a later date the question of co-loading practices with respect to OSRA's modified criteria for exemptions, as well as other changes made by OSRA.

Section 520.12 Time/Volume Rates

The provision relating to time/volume rates in foreign commerce is contained in 46 CFR 514.13(b)(19)(i). The proposed rule has placed them in a separate section, while generally carrying forward the previous requirements affecting time/volume rates. In addition, this section permits carriers to cancel time/volume rates which have not been "accepted" by a shipper within 30 days and prohibits the use of liquidated damages provisions in time/volume rate offerings. The Commission believes that the use of liquidated damages provisions are more appropriate to service contracts.

Section 520.13 Exemptions

This section sets forth various services and cargo types that are currently exempt under 46 CFR 514.3. Several of the prior exemptions have not been carried forward because they are no longer relevant to a carrier tariff publication rule or they are no longer subject to the Commission's jurisdiction. However, the Commission questions whether all of the exemptions carried forward are still necessary and accordingly invites comment by interested parties as to the continued need for certain exemptions. The proposed rule further notes future exemption requests will be governed by section 16 of the 1984 Act and Rule 67 of the Commission's rules of practice and procedure. 46 CFR 502.67.

Section 520.14 Special Permission

Proposed § 520.14 essentially carries forward the special permission procedure set forth at 46 CFR 514.18. Minor modifications have been made to reflect the changes occasioned by OSRA.

Inland Portions of Through Movements to Europe

Unlike the United States, it appears that the European Commission ("E.C.")—while permitting conference tariffs for the ocean movement of cargo—prohibits conference tariffs which cover the movement of cargo to inland points in Europe. Therefore, it seems that carriers in the U.S.-European trade may participate in a conference tariff covering U.S.-Europe ocean movements, and utilize individual tariffs covering European inland

transport for the same shipper customer. A question has arisen as to whether these tariffs for European inland transport must be published under the Act. It would seem that publishing would be consistent with statutory requirements to the extent the tariffs establish the European inland portion of a through rate charged by a carrier in a U.S.-Europe intermodal movement. However, the Commission welcomes comments on how it could minimize the regulatory burdens occasioned by these differences in regulatory regimes, to the extent it may do so given its own statutory responsibility.

The reporting requirements contained in 46 CFR part 520 have been submitted to the Office of Management and Budget (OMB). Public burden for this collection of information is estimated to be 313,400 hours for 3,000 respondents. This estimate includes, as applicable, 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 respond to a collection of information, search existing data sources, gather and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information. Send comments regarding the burden estimate to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 within 30 days of publication in the **Federal Register**.

The FMC would also like to solicit comments to: (a) 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; (b) evaluate the accuracy of the Commission's burden estimates for the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposed rulemaking will be summarized and/or included in the final rule and will become a matter of public record.

The Chairman of the Commission certifies, pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that the proposed rule would not, if promulgated, have a significant impact on a substantial number of small entities. The rule will either have no effect on small entities, or in the case where the rule is likely to impact small entities, the economic impact will be *de minimis*.

List of Subjects in 46 CFR Parts 514 and 520

Common Carrier; Freight; Harbors, Intermodal transportation; Maritime carriers; Reporting and recordkeeping requirements.

Therefore, for the reasons set forth above, part 514 to subchapter C, chapter IV of 46 CFR is proposed to be removed and part 520 to subchapter B, chapter IV of 46 CFR is proposed to be added as set forth below:

PART 514—[REMOVED]

PART 520—CARRIER AUTOMATED TARIFFS

- Sec.
- 520.1 Scope and purpose.
 - 520.2 Definitions.
 - 520.3 Publication responsibilities.
 - 520.4 Tariff contents.
 - 520.5 Standard tariff terminology.
 - 520.6 Retrieval of information.
 - 520.7 Tariff limitations.
 - 520.8 Effective dates.
 - 520.9 Access to tariffs.
 - 520.10 Integrity of tariffs.
 - 520.11 Non-vessel-operating common carriers.
 - 520.12 Time/volume rates.
 - 520.13 Exemptions.
 - 520.14 Special permission.

Appendix A to Part 520—Standard Terminology and Codes

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1702, 1707–1709, 1712, 1716; Pub. L. 105–258, 112 Stat. 1902; and sec. 424 of Pub. L. 105–383.

§ 520.1 Scope and purpose.

(a) *Scope.* The regulations of this part govern the publication of tariffs in automated systems by common carriers and conferences in the waterborne foreign commerce of the United States. They cover the transportation of property by such carriers, including through transportation with inland carriers. They implement the tariff publication requirements of section 8 of the Shipping Act of 1984 ("Act"), as modified by the Ocean Shipping Reform Act of 1998 and section 424 of Pub. L. 105–258.

(b) *Purpose.* The requirements of this part are intended to permit:

(1) Shippers and other members of the public to obtain reliable and useful information concerning the rates and charges that will be assessed by common carriers and conferences for their transportation services;

(2) Carriers and conferences to meet their publication requirements pursuant to section 8 of the Act;

(3) The Commission to ensure that carrier tariff publications are accurate and accessible and to protect the public from violations by carriers of section 10 of the Act; and

(4) The Commission to review and monitor the activities of controlled carriers pursuant to section 9 of the Act.

§ 520.2 Definitions.

The following definitions shall apply to this part:

Act means the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998.

Amendment means any change, alteration, correction or modification of an existing tariff.

Assessorial charge means the amount that is added to the basic ocean freight rate.

BTCL means the Commission's Bureau of Tariffs, Certification and Licensing or its successor bureau.

Bulk cargo means cargo that is loaded and carried in bulk without mark or count in a loose unpackaged form, having homogeneous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the requirements of this part.

Co-loading means the combining of cargo by two or more NVOCCs for tendering to an ocean common carrier under the name of one or more of the NVOCCs.

Combination rate means a rate for a shipment moving under intermodal transportation which is computed by the addition of a TRI, and an inland rate applicable from/to inland points not covered by the TRI.

Commission means the Federal Maritime Commission.

Commodity description means a comprehensive description of a commodity listed in a tariff, including a brief definition of the commodity, any applicable assessorial, related assessorial charges if any, and the commodity index entries by which the commodity is referenced.

Commodity description number means a 10-digit number used to identify a commodity description.

Commodity index means an index of the commodity descriptions contained in a tariff.

Commodity rate means a rate for shipping to or from specific locations a commodity or commodities specifically named or described in the tariff in which the rate or rates are published.

Common carrier means a person holding itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and

(ii) Only with respect to the carriage of those commodities.

Conference means an agreement between or among two or more ocean common carriers which provides for the fixing of and adherence to uniform tariff rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members, but the term does not include joint service, consortium, pooling, sailing, or transshipment agreements.

Consignee means the recipient of cargo from a shipper; the person to whom a transported commodity is to be delivered.

Container means a demountable and reusable freight-carrying unit designed to be transported by different modes of transportation and having construction, fittings, and fastenings able to withstand, without permanent distortion or additional exterior packaging or containment, the normal stresses that apply on continuous all-water and intermodal transportation. The term includes dry cargo, ventilated, insulated, refrigerated, flat rack, vehicle rack, liquid tank, and open-top containers without chassis, but does not include crates, boxes or pallets.

Controlled carrier means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government; ownership or control by a

government shall be deemed to exist with respect to any common carrier if:

(1) A majority portion of the interest in the common carrier is owned or controlled in any manner by that government, by an agency thereof, or by any public or private person controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the common carrier.

Effective date means the date upon which a published tariff or tariff element is scheduled to go into effect. Where there are multiple publications to a tariff element on the same day, the last element published with the same effective date is the one effective for that day.

Expiration date means the last day after which the entire tariff or tariff element is no longer in effect.

Foreign commerce means that commerce under the jurisdiction of the Act.

Forest products means forest products including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper and paper board in rolls or in pallet or skid-sized sheets, liquid or granular by-products derived from pulping and papermaking, and engineered wood products.

Harmonized Code means the coding provisions of the Harmonized System.

Harmonized System means the Harmonized Tariff Schedule of the United States ("US HTS"), based on the international Harmonized System, administered by the U.S. Customs Service for the U.S. International Trade Commission.

Inland point means any city and associated state/province, country, U.S. ZIP code, or U.S. ZIP code range, which lies beyond port terminal areas. (A city may share the name of a port: the immediate ship-side and terminal area is the port, but the rest of the city is considered an inland point.)

Inland rate means a rate specified from/to an ocean port to/from an inland point, for specified modes of overland transportation.

Inland rate table means a structured matrix of geographic inland locations (points, postal codes/postal code ranges, etc.) on one axis and transportation modes (truck, rail, etc.) on the other

axis, with the inland rates specified at the matrix row and column intersections.

Intermodal transportation means continuous transportation involving more than one mode of service (e.g., ship, rail, motor, air), for pickup and/or delivery at a point beyond the area of the port at which the vessel calls. The term "intermodal transportation" can apply to "through transportation (at through rates)" or transportation on through routes using combination rates.

Joint rates means rates or charges established by two or more common carriers for ocean transportation over the combined routes of such common carriers.

Local rates means rates or charges for transportation over the route of a single common carrier (or any one common carrier participating in a conference tariff), the application of which is not contingent upon a prior or subsequent movement.

Location group means a logical collection of geographic points, ports, states/provinces, countries, or combinations thereof, which is primarily used to identify, by location group name, a group that may represent tariff origin and/or destination scope and TRI origin and/or destination.

Loyalty contract means a contract with an ocean common carrier or agreement by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or agreement and the contract provides for a deferred rebate arrangement.

Ocean common carrier means a vessel-operating common carrier.

Ocean transportation intermediary means an ocean freight forwarder or a non-vessel-operating common carrier. For purposes of this part, the term

(1) *Ocean freight forwarder* means a person that—

(i) In the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

(ii) Processes the documentation or performs related activities incident to those shipments; and

(2) *Non-vessel-operating common carrier* ("NVOCC") Means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

Open rate means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority in whole or in part, thereby permitting each individual ocean common carrier member of the

conference to fix its own rate on such commodity or commodities.

Organization name means an entity's name on file with the Commission and for which the Commission assigns an organization number.

Organization record means information regarding an entity, including its name, address, and organization type.

Origin scope means a location group defining the geographic range of cargo origins covered by a tariff.

Person includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees and personal representatives.

Point of rest means that area on the terminal facility which is assigned for the receipt of inbound cargo from the ship and from which inbound cargo may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading.

Port means a place at which a common carrier originates or terminates (by transshipment or otherwise) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

Project rates means rates applicable to the transportation of materials and equipment to be employed in the construction or development of a named facility used for a major governmental, charitable, manufacturing, resource exploitation and public utility or public service purpose, including disaster relief projects.

Proportional rates means rates or charges assessed by a common carrier for transportation services, the application of which is conditioned upon a prior or subsequent movement.

Publication date means the date a tariff or tariff element is published in a carrier's or conference's tariff.

Publisher means an organization authorized to publish or amend tariff information.

Rate means a price stated in a tariff for providing a specified level of transportation service for a stated cargo quantity, from origin to destination, on and after a stated effective date or within a defined time frame.

Retrieval means the process by which a person accesses a tariff via dial-up telecommunications or a network link and interacts with the carrier's or publisher's system on a transaction-by-transaction basis to retrieve published tariff matter.

Rules means the stated terms and conditions set by the tariff owner which govern the application of tariff rates, charges and other matters.

Scope means the location group(s) (geographic groupings(s)) listing the ports or ranges of ports to and from which the tariff's rates apply.

Shipment means all of the cargo carried under the terms of a single bill of lading.

Shipper means:

(1) A cargo owner;

(2) The person for whose account the ocean transportation is provided;

(3) The person to whom delivery is to be made

(4) A shipper's association; or

(5) An NVOCC that accepts responsibility for payment of all charges applicable under the tariff or service contract.

Shippers' association means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

Special permission means permission, authorized by the Commission, for certain tariff publications that do not conform with applicable regulations, usually involving effectiveness on less than statutory notice.

Tariff means a publication containing the actual rates, charges, classifications, rules, regulations and practices of a common carrier or a conference of common carriers. The term *practices* refers to those usages, customs or modes of operation which in any way affect, determine or change the transportation rates, charges or services provided by a common carrier or conference and, in the case of conferences, must be restricted to activities authorized by the basic conference agreement.

Tariff rate item ("TRI") means a single freight rate, in effect on and after a specific date or for a specific time period, for the transportation of a stated cargo quantity, which may move from origin to destination under a single specified set of transportation conditions, such as container size or temperature.

Tariff number means a unique 3-digit number assigned by the publisher to distinguish it from other tariffs. Tariffs may be identified by the 6-digit organization number plus the user-assigned tariff number (e.g., 999999-001) or a Standard Carrier Alpha Code ("SCAC") plus the user-assigned tariff number.

TRI number means a 14-digit number which consists of the commodity code (first ten digits) and four unique suffix differentiate TRIs within the same commodity description.

Through rate means the single amount charged by a common carrier in connection with through transportation.

Through transportation means continuous transportation between points of origin and destination, either or both of which lie beyond port terminal areas, for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port.

Thru date means the date after which an amendment to a tariff element is designated by the publisher to be unavailable for use and the previously effective tariff element automatically goes back into effect.

Time/volume rate means a rate published in a tariff which is conditioned upon receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

Trade name means a name used for conducting business, but which is not necessarily its legal name. This is also known as a "d/b/a" (doing business as) name.

Transshipment means the physical transfer of cargo from a vessel of one carrier to a vessel of another in the course of all-water or through transportation, where at least one of the exchanging carriers is a vessel-operating carrier subject to the Commission's jurisdiction.

§ 520.3 Publication responsibilities.

(a) *General.* Unless otherwise exempted by § 520.13, all common carriers and conferences shall keep open for public inspection, in automated tariff systems, tariffs showing all rates, charges, classifications, rules, and practices between all points or ports on their own routes and on any through transportation route that has been established.

(b) *Conferences.* Conferences shall publish, in their automated tariff systems, rates offered pursuant to independent action by their members and any open rates offered by their members.

(c) *Agents.* Common carriers or conferences may use agents to meet their publication requirements under this part.

(d) *Notification.* Each common carrier and conference shall notify BTCL, prior to the commencement of common carrier service pursuant to a published tariff, of its organization name, organization number, home office address, name and telephone number of firm's representative, the location of its tariffs, and the publisher, if any, used to maintain its tariffs, by submitting Form FMC-1. Any changes to the above information shall be immediately

transmitted to BTCL. The Commission will provide a unique organization number to new entities operating as common carriers or conferences in the U.S. foreign commerce.

(e) *Location of tariffs.* The Commission will publish on its website, www.fmc.gov, a listing of the locations of all carrier and conference tariffs. The Commission will update this list on a periodic basis.

§ 520.4 Tariff contents.

(a) *General.* Tariffs published pursuant to this part shall:

- (1) State the places between which cargo will be carried;
- (2) List each classification of cargo in use;
- (3) State the level of ocean transportation intermediary, as defined by section 3(17)(A) of the Act, compensation, if any, to be paid by a carrier or conference;
- (4) State separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules or regulations that in any way change, affect, or determine any part of the aggregate of the rates or charges;
- (5) Include sample copies of any bill of lading, contract of affreightment or other document evidencing the transportation agreement;
- (6) Include copies of any loyalty contract, omitting the shipper's name;
- (7) Contain an organization record, tariff record, and tariff rules; and
- (8) For commodity tariffs, also contain commodity descriptions and tariff rate items.

(b) *Organization record.* Common carriers' and conferences' organization records shall include:

- (1) Organization name;
- (2) Organization number assigned by the Commission;
- (3) Agreement number, where applicable;
- (4) Organization type (e.g., ocean common carrier (VOCC), conference (CONF), non-vessel-operating common carrier (NVOCC) or agent);
- (5) Home office address and telephone number of firm's representative;
- (6) Names and organization numbers of all affiliates to conferences or agreements, including trade names; and
- (7) The publisher, if any, used to maintain the organization's tariffs.

(c) *Tariff record.* The tariff record for each tariff shall include:

- (1) Organization number and name, including any trade name;
- (2) Tariff number;
- (3) Tariff title;
- (4) Tariff type (e.g., commodity, rules, equipment interchange, or bill of lading);

(5) Contact person and address;

(6) Default measurement and currency units; and (7) Origination and destination scope.

(d) *Tariff rules.* Carriers and conferences shall publish in their tariffs any rule that affects the application of the tariff. If they adopt rules addressing the following subject areas, the rule shall use the following specific titles:

- (1) Scope;
- (2) Payment of freight charges;
- (3) Bills of lading;
- (4) Freight forwarder compensation;
- (5) Surcharges and arbitrations;
- (6) Transshipment;
- (7) Shipper requests;
- (8) Overcharge claims;
- (9) Heavy lift;
- (10) Extra length;
- (11) Minimum bill of lading charges;
- (12) Ad valorem rates;
- (13) Hazardous cargo;
- (14) Returned cargo;
- (15) Equipment interchange agreements;
- (16) Seasonal discontinuance;
- (17) Project rates;
- (18) Terminal handling charges; and
- (19) Destination or delivery charges.

(e) *Commodity descriptions.* (1) For each separate commodity in a tariff, a distinct 10-digit numeric code shall be used. Tariff publishers may use any numeric commodity coding pattern, but should use the U.S. Harmonized Tariff Schedule ("US HTS") for both the commodity coding and associated terminology (definitions), to the maximum extent possible.

(2) The following commodity types shall be preceded by their associated 2-digit prefixes, with the remaining digits at the publisher's option:

- (i) Mixed commodities—"99";
- (ii) Projects—"98"; and
- (iii) Non-commodities, e.g., "cargo, n.o.s.," "general cargo," or "freight-all kinds"—"00".

(3) *Commodity index.* (i) Each commodity description created under this section shall have at least one similar index entry which will logically represent the commodity within the alphabetical index. Publishers are encouraged, however, to create multiple entries in the index for articles with equally valid common use names, such as, "Sodium Chloride," "Salt, common," etc.

(ii) If a commodity description includes two or more commodities, each included commodity shall be shown in the index.

(iii) Items, such as "mixed commodities," "projects" or "project rates," "n.o.s." descriptions, and "FAK," shall be included in the commodity index.

(f) *Tariff rate items.* A tariff rate item ("TRI") is the single freight rate in effect for the transportation of cargo under a specified set of transportation conditions. TRIs must contain the following:

- (1) Brief commodity description;
- (2) TRI number;
- (3) Publication date;
- (4) Effective date;
- (5) Origin and destination locations or location groups;
- (6) Rate;
- (7) Rate basis;
- (8) Service code; and
- (9) Via port or port group if origin and/or destinations are not port/port group.

(g) *Location groups.* In the primary tariff, or in a governing tariff, the publisher shall define and create groups of cities, states, provinces and countries (e.g., location groups) or groups of ports (e.g., port groups), which may be used in the construction of TRIs and other tariff objects, in lieu of specifying particular place names in each tariff item, or creating multiple tariff items which are identical in all ways except for place names.

(h) *Inland rate tables.* If a carrier or conference desires to provide intermodal transportation to or from named points/postal regions at combination rates, it shall clearly and accurately set forth the applicable charges in an "Inland Rate Tables" section. An inland rate table may be constructed to provide an inland distance which is applied to a per mile rate to calculate the inland rate.

(i) *Shipper requests.* Conference tariffs shall contain clear and complete instructions, in accordance with the agreement's provisions, stating where and by what method shippers may file requests and complaints and how they may engage in consultation pursuant to section 5(b)(6) of the Act, together with a sample rate request form or a description of the information necessary for processing the request or complaint.

(j) *Inland divisions.* Common carriers are not required to state separately or otherwise reveal in tariffs the inland division of a through rate.

§ 520.5 Standard tariff terminology.

(a) *Approved codes.* The Standard Terminology Appendix provides the existing Commission approved codes which shall be used in tariffs. These approved codes for rate bases, container sizes, service, etc., and the approved units for weight, measure and distance, provide a standard terminology baseline for tariffs and facilitate retriever efficiency. The Commission will consider additions to the Appendix on

a case-by-case basis and publish changes as they are approved on its website.

(b) *Geographic names.* Tariffs shall only employ locations (points) that are valid, published locations in the National Imagery and Mapping Agency ("NIMA") gazetteer. Only ports published or approved for publication in the World Port Index (Pub. No. 150) shall be used in tariffs. A port must have a NIMA gazetteer point to be valid.

§ 520.6 Retrieval of information.

(a) *General.* Tariffs shall present retrievers with a tariff selection option and/or the capability to select an object group (e.g., rules, location groups, etc.).

(b) *Search capability.* Tariffs shall provide the capability to search for a commodity and an associated rate within a commodity tariff by text search and by number.

(1) *Commodity searches.* (i) A text search feature shall allow "non-case sensitive" text searches of commodity descriptions. Text search matches (hits) should result in a commodity or commodity index list.

(ii) A commodity number search shall allow number searches using the first two (chapter), four (heading), eight (subheading) or all ten numbers of the commodity description number.

(2) *Rate searches.* A direct rate search function shall be provided whereby the retriever may enter all fourteen numbers for access to a specific TRI.

(c) *Commodities and TRIs.* Retriever selection of a specific commodity from a commodity list, commodity index or a direct commodity number search shall display the commodity description and provide an option for a TRI display or a TRI list if multiple TRIs are in effect for the commodity on the retriever-entered access date.

(d) *Object groups.* Retriever selection of a specific object group shall result in a list of the objects within the group or present a search mechanism to allow location of an object or object within the group. For example, selection of the rules object group would present a list of the rules. For rules, a "non-case sensitive" text search capability shall be provided to locate rules that contain specific terms or phrases. Selection of the commodities object group shall allow for text and commodity number search capability.

(e) *Basic ocean freight.* The minimum rate calculation capability for tariffs shall be a calculated basic ocean freight ("BOF") (to include any adjustments to the BOF and inland rates for combination rates) and presentation of a list of all assessorial charges, by rule number and charge title, that apply for

the retriever-entered shipment parameters.

(f) *Displays.* All displays of individual tariff matter shall include the publication date, effective date, amendment code (as contained in Appendix A to this part) and object name or number. When applicable, a thru date or expiration date shall also be displayed. Use of "S" as an amendment code shall be accompanied by a Commission issued special use number.

§ 520.7 Tariff limitations.

(a) *General.* Tariffs published pursuant to this part shall:

- (1) Be clear and definite;
- (2) Use English as the primary textual language;
- (3) Not contain cross-references to any other tariffs, except a tariff of general applicability maintained by that same carrier or conference; and
- (4) Not duplicate or conflict with any other tariff publication.

(b) *Notice of cancellation.* Carriers and conferences shall inform BTCL, in writing, whenever a tariff is canceled and the effective date of that cancellation.

(c) *Applicable rates.* The rates, charges, and rules applicable to any given shipment shall be those in effect on the date the cargo is received by the common carrier or its agent including originating carriers in the case of rates for through transportation.

(d) *Minimum quantity rates.* When two or more TRIs are stated for the same commodity over the same route and under similar conditions, and the application is dependent upon the quantity of the commodity shipped, the total freight charges assessed against the shipment may not exceed the total charges computed for a larger quantity, if the TRI specifying a required minimum quantity (either weight or measurement; per container or in containers) will be applicable to the contents of the container(s), and if the minimum set forth is met or exceeded. At the shipper's option, a quantity less than the minimum level may be freighted at the lower TRI if the weight or measurement declared for rating purposes is increased to the minimum level.

(e) *Green salted hides.* The shipping weight for green salted hides shall be either a scale weight or a scale weight minus a deduction, which amount and method of computation are specified in the commodity description. The shipper must furnish the carrier a weight certificate or dock receipt from an inland common carrier for each shipment at or before the time the

shipment is tendered for ocean transportation.

(f) *Conference situations.* (1) New members of a conference shall cancel any independent tariffs applicable to the trades served by the conference, subject to paragraph (f)(2)(ii) of this section. Admission to the conference may be effective on the date notice is published in the conference tariff.

(2) Cancellation of an independent tariff requires 30 days' notice if:

(i) The carrier is a controlled carrier, or

(ii) The addition of the carrier to the conference results in a rate change from the independent tariff which causes an increase in costs to a shipper.

(g) *Overcharge claims.* (1) No tariff may limit the filing of overcharge claims with a common carrier to a period of less than three years from the accrual of the cause of action.

(2) The acceptance of any overcharge claim may not be conditioned upon the payment of a fee or charge.

(3) No tariff may require that overcharge claims based on alleged errors in weight, measurement or description of cargo be filed before the cargo has left the custody of the common carrier.

(h) *Returned cargo.* When a carrier or conference offers the return shipment of refused, damaged or rejected shipments, or exhibits at trade fairs, shows or expositions, to port of origin at the TRI assessed on the original movement, and such TRI is lower than the prevailing TRI:

(1) The return shipment must occur within one year;

(2) The return movement must be made over the line of the same common carrier performing the original movement, except in the use of a conference tariff, where return may be made by any member line when the original shipment was carried under the conference tariff; and

(3) A copy of the original bill of lading showing the rate assessed must be presented to the return common carrier.

§ 520.8 Effective dates.

(a) *General.* (1) No new or initial rate, or change in an existing rate, that results in an increased cost to a shipper may become effective earlier than 30 calendar days after publication.

(2) An amendment which deletes a specific commodity and applicable rate from a tariff, thereby resulting in a higher "cargo n.o.s." or similar general cargo rate, is a rate increase requiring a 30-day notice period.

(3) Rates for the transportation of cargo for the U.S. Department of Defense may be effective upon publication.

(4) Changes in rate charges, rules, regulations or other tariff provisions resulting in a decrease in cost to a shipper may become effective upon publication.

(b) *Amendments.* The following amendments may take effect upon publication:

(1) Those resulting in no change in cost to a shipper;

(2) The canceling of a tariff due to cessation of all service by the carrier between the ports or points covered by the tariff;

(3) The addition of a port or point to a previously existing origin or destination grouping; or

(4) Changes in charges for terminal services, canal tolls, additional charges, or other provisions not under the control of the common carriers or conferences, which merely acts as a collection agent for such charges and the agency making such changes does so without notifying the tariff owner.

(c) *Controlled carriers.* Published rates by or for controlled carriers shall be governed by the procedures set forth in part 565 of this chapter.

§ 520.9 Access to tariffs.

(a) *Methods to access.* Carriers and conferences shall provide access to their published tariffs, via a personal computer ("PC"), by:

(1) Dial-up connection via public switched telephone networks ("PSTN"); or

(2) The Internet (Web) by:

(i) Web browser; or

(ii) Telnet session.

(b) *Dial-up connection via PSTN.* (1)

This connection option requires that tariffs provide:

(i) A minimum of a 14.4Kbps modem capable of receiving incoming calls;

(ii) Smart terminal capability for VT-100 terminal or terminal emulation access; and

(iii) Telephone line quality for data transmission.

(2) The modem may be included in a collection (bank) of modems as long as all modems in the bank meet the minimum speed. Smart terminal emulation provides for features such as bold, blinking, underlining and positioning to specific locations on the display screen.

(c) *Internet connection.* (1) This connection option requires that systems provide:

(i) A universal resource locator ("URL") Internet address (e.g., <http://www.tariffsrus.com> or <http://1.2.3.4>); and/or

(ii) A URL Internet address (e.g., <telnet://tariffsrus> or <telnet://1.2.3.4>), for Telnet session access over the Internet.

(2) Carriers or conferences shall ensure that their Internet service providers provide static Internet addresses.

(d) *Commission access.* Commission telecommunications access to systems must include connectivity via a dial-up connection over PSTNs or a connection over the Internet. Connectivity will be provided at the expense of the publishers. Any recurring connection fees, hardware rental fees, usage fees or any other charges associated with the availability of the system are the responsibility of the publisher. The Commission shall only be responsible for the long-haul charges for PSTN calls to a tariff initiated by the FMC.

(e) *Limitations.* (1) Tariffs must be made available to any person without time, quantity, or other limitations.

(2) Carriers are not required to provide remote terminals for access under this section.

(3) Carriers and conferences may assess a reasonable fee for access to their tariff publication systems and such fees shall not be discriminatory.

(4) Tariff publication systems shall provide user instructions for access to tariff information.

(f) *Federal agencies.* Carriers and conferences may not assess any access charges against the Commission or any other Federal agency.

(g) *User identifications.* Carriers and conferences shall provide the Commission with the documentation it requires and the number of user identifications and passwords it requests to facilitate the Commission's access to their systems.

§ 520.10 Integrity of Tariffs.

(a) *Historical data.* Carriers and conferences shall maintain the data in their tariff publication systems for a period of 5 years from the date any information is superseded, canceled or withdraws, and shall provide on-line access to such data.

(b) *Access date capability.* Each tariff shall provide the capability for a retriever to enter an access date, i.e., a specific date for the retrieval of tariff data, so that only data in effect on that date would be directly retrievable. This capability would also align any rate adjustments and assessorial charges that were effective on the access date for rate calculations and designation of applicable surcharges. The access date shall also apply to the alignment of tariff objects for any governing tariffs.

(c) *Periodic review.* The Commission will periodically review published tariff systems and will prohibit the use of any system that fails to meet the requirements of this part.

(d) *Access to systems.* Carriers and conferences shall provide the Commission reasonable access to their automated systems and records in order to conduct reviews.

(e) *Certification.* Before a tariff becomes effective, carriers and conferences shall provide BTCL with a written certification by an officer or executive that all information contained in their tariff publication is true and accurate and that no unlawful alterations will be permitted.

§ 520.11 Non-vessel-operating common carriers.

(a) *Financial responsibility.* An ocean transportation intermediary that operates as a non-vessel-operating common carrier shall state in its tariff publication:

(1) That it has furnished the Commission proof of its financial responsibility in the manner and amount required by part 515 of this chapter;

(2) The manner of its financial responsibility;

(3) Whether it is relying on coverage provided by a group or association to which it is a member;

(4) The name and address of the surety company, insurance company or guarantor issuing the bond, insurance policy, or guaranty;

(5) The number of the bond, insurance policy or guaranty; and

(6) Where applicable, the name and address of the group or association providing coverage.

(b) *Agent for service.* Every NVOCC not in the United States shall state the name and address of the person in the United States designated under part 515 of this chapter as its legal agent for service of process, including subpoenas. The NVOCC shall further state that in any instance in which the designated legal agent cannot be served because of death, disability or unavailability, the Secretary, FMC will be deemed to be its legal agent for service of process.

(c) *Co-loading.* (1) NVOCCs shall address the following situations in their tariffs:

(i) If an NVOCC does not tender cargo for co-loading, this shall be noted in its tariff.

(ii) If two or more NVOCCs enter into an agreement which establishes a carrier-to-carrier relationship for the co-loading of cargo, then the existence of such agreement shall be noted in the tariff.

(iii) If two NVOCCs enter into a co-loading arrangement which results in a shipper-to-carrier relationship, the tendering NVOCC shall describe its co-loading practices and specify its

responsibility to pay any charges for the transportation of the cargo. A shipper-to-carrier relationship shall be presumed to exist where the receiving NVOCC issues a bill of lading to the tendering NVOCC for carriage of the co-loaded cargo.

(2) *Documentation requirements.* An NVOCC which tenders cargo to another NVOCC for co-loading, whether under a shipper-to-carrier or carrier-to-carrier relationship, shall annotate each applicable bill of lading with the identity of any other NVOCC to which the shipment has been tendered for co-loading. Such annotation shall be shown on the face of the bill of lading in a clear and legible manner.

(3) *Co-loading rates.* No NVOCC may offer special co-loading rates for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC which tenders that cargo in the capacity of a shipper, it must be rated and carried under tariff provisions which are available to all shippers.

§ 520.12 Time/volume rates.

(a) *General.* Common carriers or conferences may publish in their tariffs rates which are conditioned upon the receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

(b) *Publication requirements.* (1) All rates, charges, classifications rules and practices concerning time/volume rates must be set forth in the carrier's or conference's tariff.

(2) The tariff shall identify:

(i) The shipment records that will be maintained to support the rate; and

(ii) The method to be used by shippers giving notice of their intention to use a time/volume rate prior to tendering any shipments under the time/volume arrangement.

(c) *Accepted rates.* Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment. If no shipper gives notice within 30 days of publication, the time/volume rate may be canceled.

(d) *Records.* Shipper notices and shipment records supporting a time/volume rate shall be maintained by the offering carrier or conference for at least five years after a shipper's use of a time/volume rate has ended.

(e) *Liquidated damages.* Time/volume rates may not impose or attempt to impose liquidated damages on any shipper that moves cargo under the rate.

§ 520.13 Exemptions.

(a) *General.* Exemptions from the requirements of this part are governed by section 16 of the Act and Rule 67 of

the Commission's rules of practice and procedure, § 502.67 of this chapter.

(b) *Services.* The following services are exempt from the requirements of this part:

(1) *Equipment interchange agreements.* Equipment-interchange agreements between common carriers subject to this part and inland carriers, where such agreements are not referred to in the carriers' tariffs and do not affect the tariff rates, charges or practices of the carriers.

(2) *Controlled carriers in foreign commerce.* A controlled common carrier shall be exempt from the provisions of this part exclusively applicable to controlled carriers when:

(i) The vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(ii) the controlled carrier operates in a trade served exclusively by controlled carriers.

(3) *Terminal barge operators in Pacific Slope States.* Transportation provided by terminal barge operators in Pacific Slope States barging containers and containerized cargo by barge between points in the United States are exempt from the tariff publication requirements of the Act and the rules of this part, where:

(i) The cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States;

(ii) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) Such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

(c) *Cargo types.* The following cargo types are not subject to the requirements of this part:

(1) *Bulk cargo, forest products, etc.* This part does not apply to bulk cargo, forest products, recycled metal scrap, new assembled automobiles, waste paper and paper waste. Carriers or conferences which voluntarily publish tariff provisions covering otherwise exempt transportation thereby subject themselves to the requirements of this part, including the requirement to adhere to the tariff provisions.

(2) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries.

(3) *Used military household goods.* Transportation of used military household goods and personal effects by ocean transportation intermediaries.

(4) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by the Military Transportation Management Command ("MTMC") and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed in paper format with the Commission as soon as it becomes available.

(5) *Used household goods—General Services Administration.* Transportation of used military household goods and personal effects shipped by federal civilian executive agencies under the International Household Goods Program administered by the General Services Administration.

(d) *Services involving foreign countries.* The following transportation services involving foreign countries are not subject to the requirements of this part:

(1) *Between foreign countries.* This part does not apply to transportation of cargo between foreign countries, including that which is transshipped from one ocean common carrier to another (or between vessels of the same common carrier) at a U.S. port or transferred between an ocean common carrier and another transportation mode at a U.S. port for overland carriage through the United States, where the ocean common carrier accepts custody of the cargo in a foreign country and issues a through bill of lading covering its transportation to a foreign point of destination.

(2) *Between Canada and U.S.* The following services are exempt from the filing requirements of the Act and the rules of this part:

(i) *Prince Rupert and Alaska.—(A) Vehicles.* Transportation by vessels operated by the State of Alaska between Prince Rupert, Canada and ports in southeastern Alaska, if all the following conditions are met:

(1) Carriage of property is limited to vehicles;

(2) Tolls levied for vehicles are based solely on space utilized rather than the weight or contents of the vehicle and are the same whether the vehicle is loaded or empty;

(3) The vessel operator does not move the vehicles on or off the ship; and

(4) The common carrier does not participate in any joint rate establishing

through routes or in any other type of agreement with any other common carrier.

(B) *Passengers.* Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington and Prince Rupert, Canada, only if such vehicles and personal effects are the accompanying personal property of the passengers and are not transported for the purpose of sale.

(ii) *British Columbia and Puget Sound Ports; rail cars.—(A) Through rates.* Transportation by water of cargo moving in rail cars between British Columbia, Canada and United States ports on Puget Sound, and between British Columbia, Canada and ports or points in Alaska, only if the cargo does not originate in or is not destined to foreign countries other than Canada, but only if:

(1) The through rates are filed with the Surface Transportation Board and/or the Canadian Transport Commission; and

(2) Certified copies of the rate divisions and of all agreements, arrangements or concurrences, entered into in connection with the transportation of such cargo, are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(B) *Bulk; port-to-port.* Transportation by water of cargo moving in bulk without mark or count in rail cars on a local port-to-port rate basis between ports in British Columbia, Canada and United States ports on Puget Sound, only if the rates charged for any particular bulk type commodity on any one sailing are identical for all shippers, except that:

(1) This exemption shall not apply to cargo originating in or destined to foreign countries other than Canada; and

(2) The carrier will remain subject to all other provisions of the Act.

(iii) *Incan Superior, Ltd.* Transportation by Incan Superior, Ltd. of cargo moving in railroad cars between Thunder Bay, Ontario, and Superior, Wisconsin, only if the cargo does not originate in or is not destined to foreign countries other than Canada, and if:

(A) The through rates are filed with the Surface Transportation Board and/or the Canadian Transport Commission; and

(B) Certified copies of the rate divisions and all agreements, arrangements or concurrences entered into in connection with the transportation of such cargo are filed with the Commission within 30 days of

the effectiveness of such rate divisions, agreements, arrangements or concurrences.

§ 520.14 Special permission.

(a) *General.* Section 8(d) of the Act authorizes the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than the statutory notice. Section 9(c) of the Act authorizes the Commission to permit a controlled carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part.

(b) *Clerical errors.* Typographical and/or clerical errors constitute good cause for the exercise of special permission authority but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the attending circumstances, and shall be submitted with reasonable promptness after publishing the defective tariff material.

(c) *Application.* (1) Applications for special permission to establish rate increases or decreases on less than statutory notice or for waiver of the provisions of this part, shall be made by the common carrier, conference or agent for publishing. Every such application shall be submitted to BTCL and be accompanied by a filing fee of \$179.

(2) Applications for special permission shall be made only by letter, except that in emergency situations, application may be made by telephone or facsimile if the communication is promptly followed by a letter and the filing fee.

(3) Applications for special permission shall contain the following information:

(i) Organization name, number and trade name of the conference or carrier;

(ii) Tariff number and title; and

(iii) The rate, commodity, or rules related to the application, and the special circumstances which the applicant believes constitute good cause to depart from the requirements of this part or to warrant a tariff change upon less than the statutory notice period.

(d) *Implementation.* The authority granted by the Commission shall be used in its entirety, including the prompt publishing of the material for which permission was requested. Applicants shall use the special case number assigned by the Commission with the symbol "S".

Appendix A—Standard Terminology and Codes*I. Publishing/Amendment Type Codes*

Code Definition

A	Increase
C	Change resulting in neither increase nor decrease in rate or charges
E	Expiration (also use "A" if the deletion results in the application of a higher "cargo, n.o.s." or similar rate)
I	New or initial matter
K	Rate or change filed by a controlled common carrier member of a conference under independent action
M	Transportation of U.S. Department of Defense cargo by American-flag common carriers.
P	Addition of a port or point
R	Reduction.
S	Special Case matter filed pursuant to Special Permission, Special Docket or other Commission direction, including filing of tariff data after suspension, such as for controlled carriers. Requires "Special Case Number."
T	Terminal Rates, charges or provisions or canal tolls over which the carrier has no control.
W	Withdrawal of an erroneous publication on the same publication date
X	Exemption for controlled carrier data in trades served exclusively by controlled carriers or by controlled carriers of states receiving most-favored-nation treatment.

II. Valid Unit Codes

Weight Units

Kilograms	KGS
1000 Kgs (Metric Ton)	KT
Pounds	LBS
Long Ton (2240 LBS)	LT
Short Ton (2000 LBS)	ST

Volume Units

Cubic meter	CBM
Cubic feet	CFT

Length Units

Centimeters	CM
Feet	FT
Inches	IN
Meters	M

Measure Board Feet

Thousand Board Feet	MBF
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Distance Units

Kilometers	KM
Miles	MI

Rate Basis

Ad Valorem	AV
Each	EA
Lump Sum	LS
Measure	M
Thousand Board Feet	MBF
Per Container	PC
Weight	W
Weight/Measure	WM

Container Size Codes

Not Applicable	N/A
Less Than Load	LTL
10FT Any Height	10X
Weight Units	
Kilograms	KGS

1000 Kgs (Metric Ton)	KT
Pounds	LBS
Long Ton (2240 LBS)	LT
Short Ton (2000 LBS)	ST

Volume Units

Cubic meter	CBM
Cubic feet	CFT

Length Units

Centimeters	CM
Feet	FT
Inches	IN
Meters	M

Measure Board Feet

Thousand Board Feet	MBF
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Distance Units

Kilometers	KM
Miles	MI

Rate Basis

Ad Valorem	AV
Each	EA
Lump Sum	LS
Measure	M
Thousand Board Feet	MBF
Per Container	PC
Weight	W
Weight/Measure	WM

Container Size Codes

Not Applicable	N/A
Less Than Load	LTL
10FT Any Height	10X
20FT 8'6"	20
20FT 90 High Cube	20A
20FT 9'6" High Cube	20B
20FT 8'0"	20S
20FT Any Height	20X
24FT 8'6"	24
24FT 9'0" High Cube	24A
24FT 9'6" High Cube	24B
24FT 8'0"	24S
24FT Any Height	24X
35FT 8'6"	35
35FT 9'0" High Cube	35A
35FT 9'6" High Cube	35B
35FT 8'0"	35S
35FT Any Height	35X
40FT 8'6"	40
40FT 9'0" High Cube	40A
40FT 9'6" High Cube	40B
40FT 8'0"	40S
40FT Any Height	40X
42FT 8'6"	42
42FT 9'0" High Cube	42A
42FT 9'6" High Cube	42B
42FT 8'0"	42S
42FT Any Height	42X
43FT 8'6"	43
43FT 9'0" High Cube	43A
43FT 9'6" High Cube	43B
43FT 8'0"	43S
43FT Any Height	43X
45FT 8'6"	45
45FT 9'0" High Cube	45A
45FT 9'6" High Cube	45B
45FT 8'0"	45S
45FT Any Height	45X
48FT 8'6"	48
48FT 9'0" High Cube	48A
48FT 9'6" High Cube	48B
48FT 8'0"	48S
48FT Any Height	48X
53FT 8'6"	53
53FT 9'0" High Cube	53A

53FT 9'6" High Cube	53B
53FT 8'0"	53S
53FT Any Height	53X

Container Type Codes

Not Applicable	N/A
Atmosphere Control	AC
Collapsible Flatrack	CF
Drop Frame	DF
Flat Bed	FB
Flat Rack	FR
Garment Container	GC
Half-Height	HH
Hardtop	HT
Insulated	IN
Open Top	OT
Dry	PC
Platform	PL
Reefer	RE
Tank	TC
Top Loader	TL
Trailer	TR
Vehicle Racks	VR
Double-length Skid	DSK
Double-length	DTB
Firkin	FIR
Flo-Bin	FLO
Frame	FRM
Flask	FSK
Forward Reel	FWR
Garment on Hanger	GOH
Heads of Beef	HED
Hogshead	HGH
Hopper Car	HPC
Hopper Truck	HPT
On Hanger/Rack in bx	HRB
Half-Standard Rack	HRK
Half-Stand. Tote Bin	HTB
Jar	JAR
Keg	KEG
Kit	KIT
Knockdown Rack	KRK
Knockdown Tote Bin	KTB
Liquid Bulk	LBK
Lifts	LIF
Log	LOG
Loose	LSE
Lug	LUG
Lift Van	LVN
Multi-roll Pak	MRP
Noil	NOL
Nested	NST
Pail	PAL
Packed—NOS	PCK
Pieces	PCS
Pirns	PIR
Package	PKG
Platform	PLF
Pipe Line	PLN
Pallet	PLT
Private Vehicle	POV
Pipe Rack	PRK
Quarters of Beef	QTR
Rail (semiconductor)	RAL
Rack	RCK
Reel	REL
Roll	ROL
Reverse Reel	RVR
Sack	SAK
Shook	SHK
Sides of Beef	SID
Skid	SKD
Skid, Elev, Lift Trk	SKE
Sleeve	SLV
Spin Cylinders	SPI
Spool	SPL
Tube	TBE

Tote Bin	TBN
Tank Car Rail	TKR
Tank Truck	TKT
Intermdl Trlr/Cntnr	TLD
Tank	TNK
Tierce	TRC
Trunk and Chest	TRK
Tray	TRY
Trunk, Salesmen Samp	TSS
Tub	TUB
Unpacked	UNP
Unit	UNT
Vehicles	VEH
Van Pack	VPK
On Own Wheels	WHE
Wheeled Carrier	WLC
Wrapped	WRP
Not Applicable	N/A
Shipment Stowage Location Codes	
Not Applicable	N/A
On Deck	OD
Bottom Stowage	BS
Hazard Codes	
Not Applicable	N/A
IMD Stow Category A	A
IMD Stow Category B	B
IMD Stow Category C	C
IMD Stow Category D	D
IMD Stow Category E	E
Hazardous	HAZ
Non-Hazardous	NHZ
Stuffing/Stripping Modes	
Not Applicable	N/A
Mechanical	MECH
Hand Loading	HAND
FC	Foreign Commodity Tariff
FR	Foreign Rules Tariff
TM	Terminal Tariff
SC	Service Contracts

By the Commission:

Joseph C. Polking,

Secretary.

[FR Doc. 98-33701 Filed 12-18-98; 8:45 am]

BILLING CODE 6730-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking concerning child seat labels. This petition is denied because all of the suggested amendments either have been made pursuant to other

rulemaking activities or have not been supported by new information.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues: Mary Versailles, Office of Safety Performance Standards, NPS-31, telephone (202) 366-2057.

For legal issues: Deirdre Fujita, Office of Chief Counsel, NCC-20, telephone (202) 366-2992.

SUPPLEMENTARY INFORMATION: NHTSA received a petition for rulemaking from Applied Safety and Ergonomics, Inc. requesting changes to the labeling requirements specified in Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems." The first change relates to a warning label required by S5.5.2(k)(1)(ii) or S5.5.2(k)(2)(ii) concerning rear-facing child seats and air bags. The second change relates to features required of the air bag warning label, specified in S5.5.2(k)(4). The third change relates to a label specified in S5.5.2(l) requiring a diagram showing placement of a child restraint system in the right front outboard seating position equipped with a continuous-loop lap/shoulder belt.

Sections S5.5.2(k)(1)(ii) and S5.5.2(k)(2)(ii) require rear-facing child restraints or child restraints that can be used rear-facing, respectively, to be labeled with a statement warning that the child restraint should not be placed in the front seat of a vehicle with an air bag. S5.5.2(k)(3) requires this statement to be on a "red, orange or yellow contrasting background." The petition states that this can result in poor color contrast and requests that the requirement be amended to require background color contrast only behind the signal word, and not as a background for the entire label.

This aspect of the petition is denied as moot. Sections S5.5.2(k)(1)(ii), (k)(2)(ii), and (k)(3) no longer apply to child restraints manufactured on or after May 27, 1997. The current label requires a white background except for the heading. Therefore, the petitioner's suggested changes to the required background color for the label already are reflected in the labeling requirement.

Section S5.5.2(k)(4) requires child seats manufactured on or after May 27, 1997 to be labeled with a warning concerning children and air bags. The label reads:

Warning

DO NOT place rear-facing child seat on front seat with air bag.

DEATH OR SERIOUS INJURY can occur.

The back seat is the safest place for children 12 and under.

The heading must be black with a yellow background.

The petition notes that ANSI Z535.4 calls for an orange background in the heading area when the signal word is "warning." The petition asks NHTSA to at least allow manufacturers the option of using orange.

In the final rule on air bag labels, NHTSA discussed the focus group reactions to orange and yellow (November 27, 1996; 61 FR 60206). Based on that, NHTSA decided to specify yellow rather than orange because group evidence overwhelmingly suggests that yellow would be a more effective color than orange for attracting attention to the label. The petition offers no explanation or evidence that this reasoning was in error. Therefore, this aspect of the petition is denied.

S5.5.2(l) requires child seats to be labeled with a diagram showing placement in the right front outboard seating position equipped with a continuous-loop lap/shoulder belt. The petition asks NHTSA to change this requirement to specify a rear seat location, since a rear-facing infant seat should never be in a front seat if the vehicle has air bags.

This change has already been made to the standard in a final rule published October 1, 1998. NHTSA changed this requirement to delete the requirement that the diagram show a front seating position (63 FR 52626). This will allow manufacturers to change the label to show a rear seat. Therefore, this issue is also moot.

As the issues raised by the petitioner have been addressed in other rulemaking actions or have not been supported by new information, the agency is denying the petition for rulemaking.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: December 15, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98-33721 Filed 12-18-98; 8:45 am]

BILLING CODE 4910-59-P

Notices

Federal Register

Vol. 63, No. 244

Monday, December 21, 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

Center for Nutrition Policy and Promotion; Agency Information Collection Activities: Proposed Collection; Comment Report—Nutrition and Your Health: Dietary Guidelines for Americans in 2000

AGENCY: Center for Nutrition Policy and Promotion, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. This notice announces the Center for Nutrition Policy and Promotion's intention to request the Office of Management and Budget's approval of the information collection instruments to be used during research with focus groups of consumers to gauge their understanding of the concepts and messages of the Dietary Guidelines for Americans. Approval is also requested for an additional collection instrument to be used during consumer research with focus groups to test prototype sections of nutrition education materials based on preliminary drafts of the anticipated Dietary Guidelines fifth edition. The information collected will be summarized and presented in written reports made available to the Dietary Guidelines Advisory Committee and will be used to refine the consumer bulletin, to develop new nutrition promotion products, and to plan a national campaign to promote the 2000 Dietary Guidelines for Americans.

DATES: Written comments on this notice must be submitted on or before February 19, 1999.

ADDRESSES: 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 will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to Carole Davis, Nutrition Promotion Staff Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture, 1120 20th Street, NW, Suite 200 North Lobby, Washington, DC 20036.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Catherine Tarone, (202) 606-4154.

SUPPLEMENTARY INFORMATION:

Title: Nutrition and Your Health: Dietary Guidelines for Americans in 2000.

OMB Number: Not assigned yet.

Expiration Date: Not applicable.

Type of Request: New collection of information.

Abstract: The Dietary Guidelines for Americans were first introduced over 15 years ago. Section 301 of the National Nutrition Monitoring and Related Research Act of 1990 requires the Secretaries of Agriculture (USDA) and Health and Human Services (DHHS) to publish jointly at least every 5 years a report entitled, Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans. The next report is due by December 2000. The 1995 Dietary Guidelines Advisory Committee recommended that USDA and DHHS gather information about consumer understanding of the Dietary Guidelines' messages and concepts.

This study involves twelve focus groups: four adult general consumer groups (two male and two female), two African-American groups (one male and one female), two overweight adult groups (one male and one female), two older adult groups (one male and one female), two food stamp participant

groups (one male one female), to gauge the understanding and effectiveness of the Dietary Guidelines. Two focus groups of health professionals will gauge the use of the Dietary Guidelines and effectiveness of the concepts and messages. The information collected will be analyzed and summarized in a report made available to the Dietary Guidelines Advisory Committee. A second phase of this study involves twelve focus groups of consumers to pre-test prototype sections of nutrition education material based on preliminary drafts of the anticipated Dietary Guidelines fifth edition. The results of the focus group sessions will be analyzed and summarized in a report made available to the Dietary Guidelines Advisory Committee and will be used to refine the nutrition prototypes, to develop new nutrition promotion products, and to plan a national campaign to promote the Dietary Guidelines for Americans, fifth edition.

Affected Public: Adult consumers.

Estimated Number of Respondents: 234.

Estimated Time Per Response: 4 hours/focus group.

Estimated Total Annual Burden on Respondents: 936 hours.

Dated: December 16, 1998.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Services.

[FR Doc. 98-33748 Filed 12-18-98; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF AGRICULTURE

Forest Service

Wild and Scenic River Suitability Study for Pine Creek (Box/Death Hollow Wilderness Section), Mamie Creek and Its West Tributary, Death Hollow Creek (Box/Death Hollow Wilderness Section), East Fork Boulder Creek, Slickrock Canyon, Cottonwood Canyon, Steep Creek, Water Canyon, Lamanite Arch Canyon, and The Gulch, Dixie National Forest, Garfield County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) which analyzes the suitability of

sections of Pine Creek (Box/Death Hollow Wilderness portion), Mamie Creek and its west tributary, Death Hollow Creek (Box/Death Hollow Wilderness portion), East Fork Boulder Creek, Slickrock Canyon, Cottonwood Canyon, Steep Creek, Water Canyon, Lamanite Arch Canyon, and The Gulch, within the Dixie National Forest boundary in Garfield County, Utah, for inclusion into the National Wild and Scenic Rivers System. The Forest Service invites written comments and suggestions on the suitability of these river sections. The DEIS will also include a Forest Land and Resource Management Plan amendment. The amendment will provide interim protection for those rivers recommended to Congress until Congress rules on a final recommendation.

The agency gives notice that the environmental analysis process is underway. Interested and potentially affected persons, along with local, state, and other federal agencies, are invited to participate and contribute to the environmental analysis prior to final recommendation to Congress.

DATES: Written comments to be considered in the preparation of the Draft Environmental Impact Statement (DEIS) should be submitted on or before January 22, 1999.

ADDRESSES: Submit written comments to: Forest Supervisor, Dixie National Forest, 82 N. 100 E., Cedar City, UT 84720.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and draft EIS should be directed to Steve Robertson, Wild and Scenic River Planning Team Leader, Dixie National Forest, 82 N. 100 E., Cedar City, UT 84720; telephone 435-865-3700.

SUPPLEMENTARY INFORMATION: The USDA, Forest Service will study the suitability of sections of Pine Creek (Box/Death Hollow Wilderness portion), Mamie Creek and its west tributary, Death Hollow Creek (Box/Death Hollow Wilderness portion), East Fork Boulder Creek, Slickrock Canyon, Cottonwood Canyon, Steep Creek, Water Canyon, Lamanite Arch Canyon, and The Gulch, within the Dixie National Forest boundary for possible inclusion in the National Wild and Scenic Rivers System. This suitability analysis is being initiated in response to the Management Plan currently being prepared by the Bureau of Land Management (BLM) for the Grand Staircase-Escalante National Monument (GSENM). A portion of this plan includes an assessment of streams and rivers within the boundary of the

GSENM for inclusion into the National Wild and Scenic Rivers System. Recognizing the need for consistency across jurisdictional boundaries, the Dixie National Forest, Bryce Canyon National Park, and Glen Canyon National Recreation Area, have worked together with the GSENM during the eligibility phase of their wild and scenic rivers analysis. This increased the Monument's study area to include portions of rivers that extended onto other Federally managed areas and allowed the planning team to look at entire watersheds.

Section 5(d)(1) of the Wild and Scenic Rivers Act of 1968 (Public Law 90-542, 82 Stat. 906, as amended; 16 U.S.C. 1271-1287) allows for the study of new potential wild and scenic rivers not designated under Section 3(a) or designated for study under Section 5(a) of the Act. Section 5(d)(1) states "In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic, and recreational river areas." Within the boundary of the Dixie National Forest, the suitability study will consider the following streams for inclusion into the National Wild and Scenic Rivers System: a 3.1 mile segment of Pine Creek and its tributaries within the boundary of the Box Death Hollow Wilderness Area; a 0.4 mile segment of Mamie Creek and its west tributary from their headwaters to the Forest boundary; a 13.4 mile segment of Death Hollow Creek from its headwaters on the Dixie National Forest within the Box Death Hollow Wilderness to Mamie Creek; a 2.7 mile segment of East Fork Boulder Creek immediately below Boulder Top to the upstream end of Kings Pasture; a 0.7 mile segment of Slickrock Canyon from its headwaters at 6720 feet elevation to the Forest boundary; a 2.5 mile segment of Cottonwood Canyon from its headwaters to the Forest boundary; a 3.0 mile segment of Steep Creek from one mile below Hiway 12 to the Forest boundary; a 0.2 mile segment of Water Canyon from its headwaters to the Forest boundary; a 0.6 mile segment of Lamanite Arch Canyon from its headwaters to the Forest boundary; and a 0.9 mile segment of The Gulch from its headwaters to the Forest boundary. The analysis will also include lands within 1/4 mile from each streambank. Preliminary alternatives include recommending a wild, scenic, or recreation designation for each segment and an alternative that recommends none of the segments for designation. Other appropriate alternatives may be

considered. The DEIS will also include an amendment to the Dixie National Forest Land and Resource Management Plan to protect those rivers recommended to Congress until Congress rules on a final recommendation.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest, is the responsible official for preparing the suitability study. The Secretary of Agriculture, U.S. Department of Agriculture, Room 200-A, Administration Building, Washington DC, 20250 is the responsible official for recommendations for wild and scenic designation. The Forest Service is seeking comments from individuals, organizations, and local, state and Federal agencies who may be interested in or affected by the proposed action. The public input will be used in preparation of the draft EIS which is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by April, 1999. At that time, the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of these rivers participate at this time. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible, it is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Scoping notices have been sent to those interested publics on the Dixie National Forest NEPA mailing list. Other interested individuals, organizations, or agencies may have their names added to the mailing list for this project at any time by submitting a request to: Hugh C. Thompson, Forest Supervisor, Dixie National Forest, 83 N. 100 E., Cedar City, Utah 84720.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. Vermont Yankee Nuclear Power Corp. Versus NRDC, 435 U.S. 519, 553(1978).

Also, environmental objections that could have been raised at the DEIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon Versus Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc versus Harris*, 490 F. Supp. 1334. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the final EIS.

After the comment period ends on the draft EIS, comments will be analyzed and considered by the Forest Service in preparing the final EIS. In the final EIS, the Forest Service will respond to comments received. The final EIS is scheduled to be completed by October 1999. The Secretary of Agriculture will consider the comments, response, and consequences discussed in the EIS, applicable laws, regulations, and policies in making recommendation to the President regarding suitability of these river segments for inclusion into the National Wild and Scenic Rivers System. The final decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the Congress of the United States.

Dated: December 8, 1998.

Hugh C. Thompson,

Forest Supervisor, Dixie National Forest.

[FR Doc. 98-33649 Filed 12-18-98; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

EIS for The Herger-Feinstein Quincy Library Group Forest Recovery Act Pilot Project

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: On October 21, 1998, the President of the United States signed the Department of the Interior and Related Agencies Appropriations Act, including Section 401, The Herger-Feinstein Quincy Library Group Forest Recovery Act (Act).

The Act states that the Secretary of Agriculture, acting through the Forest Service and after completion of an environmental impact statement, shall conduct a pilot project on described Federal lands to demonstrate the

effectiveness of specific resource management activities including fuelbreaks, group selection and individual tree selection, and avoidance or protection of specified areas. A Record of Decision (ROD) is to be adopted by August 17, 1999.

Additionally, the Forest Service is to develop a program for riparian restoration. The Pilot Project is defined in the Act as Quincy Library Group Proposal, as described in the "Quincy Library Group-Community Stability Proposal", to be implemented on Federal lands identified on the map (MAP) entitled "Quincy Library Group Community Stability Proposal", dated October 12, 1993, and prepared by Vestra Resources of Redding, California.

DATES: The public is asked to submit any issues (points of concern, debate, dispute or disagreement) regarding potential effects of the proposed action or alternatives by January 19, 1999.

ADDRESSES: Send comments to David Peters, Project Manager, USDA Forest Service, Herger-Feinstein Quincy Library Group Forest Recovery Act Pilot Project, PO Box 11500, Quincy, CA 95971.

FOR FURTHER INFORMATION CONTACT: Contact David Peters, Project Manager, USDA Forest Service, Herger-Feinstein Quincy Library Group Forest Recovery Act Pilot Project, PO Box 11500, Quincy, CA 95971. Copies of the Quincy Library Group Community Stability Proposal, the ACT, the MAP and associated documents are available upon request from the Project Manager.

SUPPLEMENTARY INFORMATION:

Background and Early Public Involvement

The pilot project is based on an agreement by a coalition of representatives of fisheries, timber, environmental, county government, citizen groups, and local communities that formed in northern California to develop a resource management program that promotes ecologic and economic health for certain Federal lands and communities in the Sierra Nevada area. The agreement is the "Quincy Library Group-Community Stability Proposal," which has received broad public review over a period of years. The proposal was developed by an active cross-section from the local communities. The proposal was included for analysis in the "Draft Environmental Impact Statement, Managing California Spotted Owl Habitat in the Sierra Nevada National Forests of California, an Eco-system Approach", 1996. Additionally, there were congressional hearings and debate

associated with the proposed Bill as it was introduced in the House of Representatives.

Proposed Action

The Act directs the Forest Service to develop a Pilot Project, described as follows

- **Pilot Project Area and Exclusions.** The pilot project is limited to certain Federal lands (National Forest System Lands of the Plumas, Lassen, and Tahoe National Forests) and local communities of the Sierra Nevada area, that are identified on the MAP as "Available for Group Selection". All spotted owl habitat areas and protected activity centers located in the pilot project area will be deferred from resource management activities.

- **Riparian Protection and Limitation.** The Scientific Analysis Team (SAT) guidelines for riparian protection are described in the document entitled "Viability Assessments and Management considerations for Species Associated with Late-Successional and Old-Growth Forests of the Pacific Northwest", a Forest Service research document dated March 1993 and coauthored by the Scientific Analysis Team, including Dr. Jack Ward Thomas. The ACT does not require the application of SAT guidelines to any livestock grazing in the pilot project area during the term of the pilot project, unless the livestock grazing is being conducted in the specific location at which the SAT guidelines are being applied to a required "Resource Management Activity".

- **Compliance.** All required "Resource Management Activities" shall be implemented to the extent consistent with applicable Federal Law and the standards and guidelines for the conservation of the California spotted owl as set forth in the California Spotted Owl Sierran Province Interim Guidelines or subsequently issued guidelines.

- **Roadless Area Protection.** Required "Resource Management Activities", road building, riparian management activity that utilize road construction, and timber harvesting activities, shall not be conducted on National Forest System Lands that are designated as either "Off Base" or "Deferred" on the MAP.

- **Required "Resource Management Activities".** The following "Resource Management Activities" shall be implemented in compliance with Section 401 (1) on an acreage basis during the term of the pilot project:

- (1) **Fuelbreak Construction.**— Construction of a strategic system of defensible fuel profile zones, including

shaded fuelbreaks, utilizing thinning, individual tree selection, and other methods of vegetation management consistent with the Quincy Library Group—Community Stability Proposal, on not less than 40,000, but not more than 60,000, acres per year.

(2) *Group Selection and Individual Tree Selection.*—Utilization of group selection and individual tree selection uneven-aged forest management prescriptions described in the Quincy Library Group—Community Stability Proposal to achieve a desired future condition of all-age, multistory, fire resilient forests as follows:

(A) *Group Selection.*—Group selection on an average acreage of 0.57 percent of the pilot project land each year of the pilot project.

(B) *Individual Tree Selection.*—Individual tree selection may also be utilized within the pilot project area.

(3) *Total Acreage.*—The total acreage on which resource management activities be implemented under this subsection shall not exceed 70,000 acres each year.

(4) *Riparian Management.*—A program of riparian management, including wide protection zones and riparian restoration projects, consistent with SAT guidelines.

• *Term of Pilot Project.*—The pilot project shall continue for five years unless the amendment or revision of the land and resource management plans for the Plumas, Lassen and Tahoe National Forests as directed are completed earlier.

Alternatives to the Proposed Action

To comply with NEPA, the Forest Service will evaluate alternatives to the proposed action within the EIS, including No Action and other alternatives responding to public comments. Each alternative would be rigorously explored and evaluated, or rationale would be given for eliminating an alternative from detailed study. The range of alternatives to be considered would include, but not be limited to:

Identification of strategic systems of defensible fuel profile zones (DFPZ), that would include shaded fuelbreaks and would be achieved through thinning, individual tree selection, and other vegetative management activities. The strategic systems would include complete descriptions of the physical arrangement of living and dead vegetation remaining in the DFPZ when completed, and identification of topographic, elevation, vegetation type, and other physical and biological criteria within which each “typical” DFPZ would also be appropriate.

Identification of a strategy to evaluate the effectiveness of uneven-age management that would be achieved by application of thinning and group selection prescriptions. The strategy would include identification of topography, elevation, vegetation type, and other physical and biological criteria that would be used to determine where and how group selection and individual tree selection prescriptions would be applied.

Strategies developed would include standards and guidelines for monitoring the effectiveness of each strategic system of DFPZs, and each uneven-aged management strategy.

Relationships With Sierra Nevada Framework for Conservation and Collaboration (SNFCC)

Selection 401 of the 1999 Department of the Interior and Related Agencies Appropriations Act (the Herger-Feinstein Quincy Library Group Forest Recovery Act), 112 Stat. 2681, directs the Secretary to implement a pilot project on certain federal lands within the Plumas, Lassen, and Tahoe National Forests. We will coordinate the Sierra Nevada Forest Plan Amendment Project Environment Impact Statement with the HFQLG environmental impact statement to implement section 401. We would like comments from the public and interested groups concerning the relationship between the two environmental impact statements.

Public Scoping Process

This Notice of Intent to Prepare an Environment Impact Statement is the initiation of a public scoping process related to implementation of the Herger-Feinstein Quincy Library Group Forest Recovery Act's Pilot Project. The public is invited to comment by submitting any issues (points of concern, debate, disagreement, or dispute) they may have regarding potential effects of the proposed action.

Public information meetings will be hosted by the Lassen, Plumas, and Tahoe National Forests at Loyalton, Blairsden, Quincy, Oroville, Chico, Burney, and Chester, CA, between January 4th and January 16th, 1999. Additionally, two scoping workshops will be held, one at Susanville and one at Quincy, on Saturday, January 16th. Location and times for the meetings will be published in the official newspapers of record for each forest. Throughout the scoping process, coordination will occur with Federal and State agencies, Tribal governments, local governments, and historically under-represented communities.

Commenting

A draft environmental statement is expected to be available for public review and comment in June, 1999 and a final environmental impact statement in August, 1999. The comment period on the draft environmental impact statement will be 45 days from the date of availability published in the **Federal Register** by the Environmental Protection Agency.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental state may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 3 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and

respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environment Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: December 15, 1998.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 98-33695 Filed 12-18-98; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Rio Sabana Day Use Picnic Area, Caribbean National Forest, Naguabo, Puerto Rico; Revised Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Revised Notice; extension of time for submitting scoping comments.

SUMMARY: Due to the passing of Hurricane Georges over the island of Puerto Rico, on September 21st, 1998, the Forest Service is extending the time for submitting scoping comments concerning the environmental analysis for the Rio Sabana Day Use Picnic Area, on the Caribbean National Forest.

Additionally, this notice corrects the location of the proposed project site, as published in the **Federal Register** on Friday, September 18th, 1998, Vol. 63, No. 181. The location of project site should read as follows: from entrance gate at Highway #191, Km. 21.3 to project site, Km. 20.0, in the Cubuy sector of the Municipality of Naguabo.

DATES: (a) Comments to be incorporated into the draft environmental impact statement should be received by January 8th 1999 to ensure timely consideration. (b) Comments to be incorporated into the final environmental impact statement should be received 45 days following the publication of Notice of Availability of the draft environmental impact statement, approximately the first week of March 31, 1999.

ADDRESSES: Send written comments to Abigail Rivera, Team Leader; Caribbean National Forest, P.O. Box 490, Palmer, Puerto Rico 00721.

FOR FURTHER INFORMATION CONTACT: Abigail Rivera, Rio Sabana Picnic Area EIS Team Leader, 787 888-5643.

SUPPLEMENTARY INFORMATION: The Caribbean National Forest is proposing: (a) to develop a day use picnic area located in the vicinity of the Rio Sabana Bridge, on the southern end of Highway #191, at Km. 20.0, in the Cubuy Sector of the Municipality of Naguabo; (b) the rehabilitation of 2.5 miles of the Rio Sabana Trail #6 and trailhead; (c) repair and reconstruction of 0.8 miles of entrance road, located on Hwy. #191, Km. 21.3, to project site. Km. 20.0; Currently, the area has not been developed for recreation but receives heavy use. This use, coupled with a sensitive ecosystem in which it is located, gives rise to a potential conflict between the need to protect and conserve natural resources and the need to provide a well managed natural setting where our customers can enjoy a satisfying recreational experience.

On April 13, 1992, U.S. District Judge Guierbolini permanently enjoined and restrained the U.S. Forest Service and the Federal Highway Administration from proceeding with construction activities on the closed portion of Highway P.R. #191, from Km. 13.5 to Km. 20, until completion of an environmental impact statement. The proposed project is located on a segment of Hwy. #191 that is outside of the area under court order.

The proposed action would meet the objectives of: (a) correcting the current managerial situation and social settings in relation to the physical setting and actual use; (b) protect the natural resources in the vicinity; (c) increase Forest Service presence on the southern end of the Forest, which currently is minimal.

The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA) and the Endangered Species Act (ESA). The U.S. Forest Service will be the lead agency and the Puerto Rico Department of Public Transportation (DTOP) will be a cooperating agency.

Public participation will be especially important at several points during analysis. The first point is when scoping officially begins (40 dCFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by

the proposed action. Comments must be received by *January 8th, 1999*. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process will include: (1) Identifying potential issues; (2) Identifying issues to be analyzed in depth; (3) Eliminating insignificant issues or those which have been covered by a relevant previous environmental process; (4) Exploring additional alternatives; (5) Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions). Public participation will include notifying interested and affected publics of the proposed action in person and/or by mail. News releases will be used to provide general notice to the public.

The following preliminary issues have been identified through internal scoping: (1) Possible effects of development of picnic area and reconstruction of Rd. #191 on the threatened and endangered species identified in the project area; (2) Possible effects on natural resources due to an increase in visitors to picnic area and trail; (3) Reconstruction of the historic CCC Rio Sabana Trail, which connects with the Tradewinds/El Toro Trail, may generate greater use than is allowed in the proposed Wilderness Management Area; (4) Security issues in the area in relation to 24-hour presence of Forest Service hosts of volunteers; (5) Potential hazards to Forest users caused by a nearby water impoundment and transmission facility, located on private land.

A draft environmental impact statement is expected to be available for public review, for 45 days, in *February 1999*.

It is very important that those interested in this proposed action participate at that time. Upon release of the draft environmental impact statement, project for *February 1999* reviewers should structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). It is also helpful if comments refer to specific

pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period on the draft environmental impact statement ends, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the *final environmental impact statement*. The final environmental impact statement is scheduled to be completed by *May 1999*. The Responsible Official will consider the comments, responses, environmental consequences discussed in the final environmental impact statement, and applicable laws, regulations, and policies in making a decision. The Responsible Official will document the decision and rationale for the decision in a Record of Decision. The decision will be subject to appeal in accordance with 36 CFR 215.

The Responsible Official is: Pablo Cruz, Forest Supervisor, Caribbean National Forest, P.O. Box 490, Palmer, Puerto Rico 00721.

Dated: November 23, 1998.

Pablo Cruz,

Forest Supervisor.

[FR Doc. 98-33650 Filed 12-18-98; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Cancellation of Designation Issued to Patricia A. Walker and Stephen A. Walker d.b.a. Northeast Indiana Grain Inspection and Opportunity for Designation in the Northeast Indiana Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: Northeast Indiana Grain Inspection (Northeast Indiana), asked GIPSA to end their designation as soon as possible. GIPSA is asking persons interested in providing official services in the Northeast Indiana area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before January 15, 1999.

ADDRESSES: Applications must be submitted to USDA, GIPSA, Janet M.

Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW, Washington, DC 20250-3604.

Applications may be submitted by FAX on 202-690-2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the GIPSA Administrator to designate a qualified applicant to provide official services in a specified area after determining that such applicant is better able than any other applicant to provide such official services. GIPSA designated Northeast Indiana, main office located in Hoagland, Indiana, to provide official inspection services, under the Act on January 1, 1997.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Northeast Indiana is scheduled to end on December 31, 2000. However, Northeast Indiana asked GIPSA to end its designation as soon as possible.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Indiana, is assigned to Northeast Indiana.

Bounded on the North by the northern Lagrange and Steuben County lines;

Bounded on the East by the eastern Steuben, De Kalb, Allen, and Adams County lines;

Bounded on the South by the southern Adams and Wells County lines; and

Bounded on the West by the western Wells County line; the southern Huntington and Wabash County lines; the western Wabash County line north to State Route 114; State Route 114 northwest to State Route 19; State Route 19 north to Kosciusko County; the western and northern Kosciusko County lines; the western Noble and Lagrange County lines.

The following grain elevator, located outside of the above contiguous geographic area, is part of this

geographic area assignment: E. M. P. Grain, Payne, Paulding County, Ohio (located inside Michigan Grain Inspection Services, Inc.'s, area).

Interested persons are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder.

Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 11, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98-33683 Filed 12-18-98; 8:45 am]

BILLING CODE 3410-EN-P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, D.C. on Tuesday and Wednesday, January 12-13, 1999, at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, January 12, 1999

9:00-Noon and 1:30-3:30 p.m.—Committee of the Whole—Accessibility Guidelines (Closed Meeting).

3:30 p.m.—5:00 p.m.—Planning and Budget Committee.

Wednesday, January 13, 1999

9:00 a.m.—10:30 a.m.—Technical Programs Committee.

10:30 a.m.—Noon—Executive Committee.

1:30 p.m.—3:30 p.m.—Board Meeting.

ADDRESSES: The meetings will be held at: Washington Renaissance, 999 9th Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W.

Roffee, Executive Director, (202) 272-5434, ext. 14 (voice) and (202) 272-5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items.

Open Meeting

- Executive Director's Report.
- Approval of the Minutes of the September 9, 1998, Board Meeting.
- Planning and Budget Committee Report—Agency Goals, Fiscal Years 1999 and 2000 Status.
- Technical Programs Committee Report—Status Report on Projects.
- Executive Committee Reports—Board Meeting Dates, Town Meeting and Public Hearings, Accessible Meeting Planning, and San Francisco Bay Area Meeting.
- Advisory Committee Reports—Passenger Vessels, Electronic and Information Technology, and Outdoor Developed Areas.

Closed Meeting

- Committee of the Whole Report—Accessibility Guidelines.
- All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 98-33662 Filed 12-18-98; 8:45 am]

BILLING CODE 8150-01-P

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: Address Listing for the American Community Survey Area Frame.

Form Number(s): ACS-280, ACS-290.

Agency Approval Number: Not available.

Type of Request: New collection.

Burden: 1,267 hours.

Number of Respondents: 38,000 individuals or households.

Avg Hours Per Response: 2 minutes.

Needs and Uses: The American Community Survey (ACS) is a monthly household survey that the Census Bureau is developing to collect and produce data we historically collect during the decennial census. The Census Bureau began the ACS in late

1995 in four test sites and has expanded the program every year since. The Census Bureau plans to continue expanding the ACS and put the ACS in place nationally in 2003. Most of the survey's sample addresses are selected from the Master Address File (MAF). There are some areas for which a MAF will not be created until the time of the decennial census. These areas are list/ enumerate areas, meaning that Bureau staff will list addresses at the time of the decennial enumeration. These types of areas will be in the ACS for the first time in 2000. In order to conduct the ACS in 2000-2002 for these areas, Census Bureau employees called "listers" will compile a list of addresses in a sample of blocks in the list/ enumerate areas of counties that have been selected for the 2000-2002 ACS. Most of the listing activities will be completed during 1999, but there may be some areas which will require listing in 2000 and 2001.

Affected Public: Individuals or households.

Frequency: One-time request.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Section 182.

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: December 15, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98-33710 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Census Advisory Committees

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law

92-463, as amended by Pub. L. 94-409, Pub. L. 96-523, and Pub. L. 97-375), we are giving notice of a joint meeting of the Commerce Secretary's 2000 Census Advisory Committee (CAC), the CAC of Professional Associations, the CAC on the African American Population, the CAC on the American Indian and Alaska Native Populations, the CAC on the Asian and Pacific Islander Populations, and the CAC on the Hispanic Population. The agenda will be limited to discussing how the Census Bureau can best use paid advertising to reach and encourage the participation of the African American Population, and the general population as a whole, in Census 2000. (A Joint Advisory Committee meeting on October 26, 1998 also focused on the advertising campaign to reach the general population and the American Indian and Alaska Native, Asian and Pacific Islander and Hispanic Populations.) Last minute changes to the schedule are possible, and they could prevent us from giving advance notice.

DATES: On Thursday, January 21, 1999, the meeting will begin at 9:00 a.m. and adjourn at approximately 3:00 p.m.

ADDRESSES: The meeting will take place at the Holiday Inn Hotel & Suites, 625 First Street, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Office, Department of Commerce, Bureau of the Census, Room 1647, Federal Building 3, Washington, DC 20233, telephone: 301-457-2308.

SUPPLEMENTARY INFORMATION: The Commerce Secretary's 2000 Census Advisory Committee is composed of a Chair, Vice Chair, and up to thirty-five member organizations, all appointed by the Secretary of Commerce. The Advisory Committee considers the goals of Census 2000 and user needs for information provided by that census. The Committee provides an outside user perspective about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Advisory Committee considers all aspects of the conduct of the 2000 Census of Population and Housing and makes recommendations to the Secretary of Commerce for improving that census.

The CAC of Professional Associations is composed of 36 members appointed by the Presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairman of the Board of the American Marketing Association. The Committee advises the Director, Bureau of the

Census, on the full range of Census Bureau programs and activities in relation to the areas of expertise.

The CACs on the African American, American Indian and Alaska Native, and Hispanic Populations are composed of nine members each and the CAC on the Asian and Pacific Islander Population is composed of 13 members, appointed by the Secretary of Commerce. The Committees provide an organized and continuing channel of communications between the communities they represent and the Bureau of the Census on its efforts to reduce the differential in the count for Census 2000 and on ways that census data can be disseminated to maximum usefulness to their communities and other users.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer on 301-457-2308, TDD 301-457-2540.

Dated: December 15, 1998.

Robert J. Shapiro,

*Under Secretary for Economic Affairs,
Economics and Statistics Administration.*

[FR Doc 98-33711 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Secretary's 2000 Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92-463, as amended by Pub. L. 94-409, Pub. L. 96-523, and Pub. L. 97-375), we are giving notice of a meeting of the Commerce Secretary's 2000 Census Advisory Committee. The Committee will continue to review and discuss Census 2000 Dress Rehearsal operations and procedures, as well as the plans for Census 2000. The Committee will continue work on a final report for the Secretary of Commerce. Last minute changes to the schedule are possible,

and they could prevent us from giving advance notice.

DATES: On Friday, January 22, 1999, the meeting will begin around 9:00 a.m. and adjourn at approximately 4:30 p.m.

ADDRESSES: The meeting will take place at the Holiday Inn Hotel & Suites, 625 First Street, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 1647, Federal Building 3, Washington DC 20233; telephone 301-457-2308, TDD 301-457-2540.

SUPPLEMENTARY INFORMATION: The Committee is composed of a Chair, Vice-Chair, and up to 35 member organizations, all appointed by the Secretary of Commerce. The Committee will consider the goals of Census 2000 and user needs for information provided by that census. The Committee will provide an outside user perspective about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Committee shall consider all aspects of the conduct of the 2000 Census of Population and Housing and shall make recommendations for improving that census.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer on 301-457-2308, TDD 301-457-2540.

Dated: December 15, 1998.

Robert J. Shapiro,

*Under Secretary for Economic Affairs,
Economics and Statistics Administration.*

[FR Doc. 98-33712 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-412-814]

Certain Cut-to-Length Carbon Steel Plate From the United Kingdom: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 21, 1998.

SUMMARY: On October 29, 1998, the Department of Commerce ("the Department") published in the **Federal Register** (63 FR 58009) a notice announcing the initiation of an administrative review of the antidumping duty order on Certain Cut-to-Length Carbon Steel Plate from the United Kingdom. This review covered the period August 1, 1997, through July 31, 1998. This review has now been rescinded as a result of a withdrawal of request for review.

FOR FURTHER INFORMATION CONTACT: Samantha Deneberg or Linda Ludwig, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482-1386 or (202) 482-3833, respectively.

SUPPLEMENTARY INFORMATION: On August 31, 1998, Mobil Oil Corporation ("Mobil"), an importer of subject merchandise, requested an administrative review of subject merchandise purchased from Murray International Metals, Inc. ("MIM"). MIM is a trading company located in the United Kingdom. The Department initiated this review on October 29, 1998. On December 2, 1998, Mobil submitted a withdrawal request for this review.

Mobil was the only party to this proceeding requesting review. The Department now rescinds this administrative review, in accordance with section 351.213(d)(1) of the Department's Regulations (May 19, 1997) based on Mobil's timely withdrawal of request for review.

This notice is published pursuant to section 751 of the Tariff Act of 1930, as amended 19 U.S.C. § 1675 (1995), and 19 CFR 351.213.

Dated: December 14, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98-33751 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-428-821]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled From Germany: Notice of Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Antidumping Duty Administrative Review.

SUMMARY: On October 29, 1998, the Department of Commerce ("the Department") published in the **Federal Register** (63 FR 58009) a notice announcing the initiation of an administrative review of the antidumping duty order on large newspaper printing presses and components thereof ("LNPPs") from Germany, covering the period September 1, 1997 through August 31, 1998, for one manufacturer/exporter of the subject merchandise, MAN Roland Druckmaschinen AG ("MRD"). This review has now been terminated as a result of the interested party's withdrawal of its request for an administrative review.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Office of AD/CVD Enforcement, Group II, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-4136.

SUPPLEMENTARY INFORMATION:**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to the regulations at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

Background

On September 30, 1998, MRD, an interested party, requested an administrative review of the antidumping duty order on LNPPs from Germany in accordance with 19 CFR 351.213(b). On October 29, 1998, in accordance with 19 CFR

351.221(c)(1)(ii), we initiated an administrative review of this order for the period September 1, 1997, through August 31, 1998. On November 20, 1998, MRD withdrew its request for this review.

Termination of Review

MRD withdrew its request within 90 days of the date of publication of the notice of initiation and, thus, within the time limit provided by the Department's regulations at 19 CFR 351.213(d)(1). Therefore, the Department is terminating this review.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3) of the Department's Regulations (see 63 FR 24391 (May 4, 1998)). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 11, 1998.

Holly Kuga,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 98-33750 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-580-825]

Oil Country Tubular Goods from Korea: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results for the second review of oil country tubular goods from Korea. This review covers the period August 1, 1996 through July 31, 1997. The extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Steve Bezirgianian at (202) 482-0162 or Doug Campau at (202) 482-3964; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Postponement of Final Results

On September 8, 1998, the Department published the preliminary results for this review. 63 FR 47469. Section 751(a)(3)(A) of the Act requires the Department to complete an administrative review within 120 days of publication of the preliminary results. However, if it is not practicable to complete the review within the 120-day time limit, section 751(a)(3)(A) of the Act allows the Department to extend the time limit to 180 days from the date of publication of the preliminary results. The Department has determined that it is not practicable to issue its final results within the original 120-day time limit (See Decision Memorandum from Joseph A. Spetrini to Robert LaRussa dated November 17, 1998). We are therefore extending the deadline for determination of final results in this review to 180 days from the date on which the notice of preliminary results was published. The fully extended deadline for determination of the final results is March 7, 1998.

Dated December 9, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98-33749 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Proposed Collection; Comment Request**

TITLE: Effectiveness Review of the Coastal Services Center's Coastal Change Analysis Program.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general

public and other Federal agencies to take this opportunity to comment on a proposal to obtain Office of Management and Budget (OMB) clearance for this information collection. OMB clearance is required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 19, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Nina Petrovich, SC Sea Grant Coastal Program Coordinator, NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston SC 29405. Phone (843) 740-1203, Email: npetrovich@csc.noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Coastal Change Analysis Program (C-CAP) of the Coastal Services Center (CSC), National Ocean Service, has been using remote-sensing technology to quantify habitat change in coastal areas of the United States. C-CAP offers a wide variety of coastal resource managers the ability to monitor habitat loss due to natural events, such as hurricanes, or human-induced events such as residential development and pollution. Since the completion of its first product in 1992, C-CAP has distributed numerous digital products to Federal, state, and local programs, as well as to academia and private industry.

CSC proposes to survey groups that have already obtained C-CAP data and products in order to assess the overall usefulness of this information. The objectives of the survey are to: receive feedback from C-CAP data users on the relevance and impact of these products; determine if the products meet user accuracy needs; and gather information on how the products may be improved in the future. Results will be used to evaluate the effectiveness and the most useful format for the products and services, and to set priorities for future programming.

II. Method of Collection

The survey will be mailed to clients with an option to respond electronically or by mail.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, local, or tribal government; Not-for-profit institutions; business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 67.

Estimated Total Annual Cost to Public: \$0 (no capital expenditures required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 15, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-33697 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121598B]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Special Shark Scientific and Statistical Committee (SSC).

DATES: The meeting of the Special Shark SSC will begin at 9:00 a.m. on Tuesday, January 5, 1999 and conclude by 5:00 p.m.

ADDRESSES: The meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813-877-6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813-228-2815.

SUPPLEMENTARY INFORMATION: The Special Shark SSC will convene to conduct a scientific review of the shark portions of a Draft Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks which was recently published by the Highly Migratory Species Management Division of NMFS, and for which public comment is being accepted by NMFS through January 25, 1999.

The Special Shark SSC, consisting of biologists who are knowledgeable about the shark resources, will review the shark portions of the draft FMP, comment on its scientific adequacy, and may make recommendations on proposed management measures. Based on the Special Shark SSC's comments, the Council may decide to comment on the proposed measures to the NMFS Highly Migratory Species Management Division.

Copies of the Special Shark SSC meeting agenda can be obtained by calling the Council office at 813-228-2815. Please note that the Council does not have copies of the draft FMP available for distribution. Copies of the draft FMP can be obtained from NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. This is also the appropriate address for individuals who wish to comment to NMFS on provisions of the draft FMP.

Although other issues not on the agenda may come before the SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other

auxiliary aids should be directed to Anne Alford at the Council (see ADDRESSES) by December 29, 1998.

Dated: December 16, 1998.

Bruce C. Morehead,

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

[FR Doc. 98-33725 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121598G]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Shrimp Advisory Panel (AP).

DATES: The meeting will begin at 9:00 a.m. on Thursday, January 7, 1999 and conclude by 3:00 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel - New Orleans, 300 Canal Street, New Orleans, LA; telephone: 504-581-1300.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813-228-2815.

SUPPLEMENTARY INFORMATION: The Shrimp AP will convene to review scientific information on the effects of the cooperative shrimp seasonal closure with the state of Texas. The Shrimp AP will also receive a presentation regarding the status of the shrimp stocks in the Gulf of Mexico and an overfishing report. A representative of the Texas Parks and Wildlife Department (TPWD) will provide a perspective of the TPWD with regard to the cooperative seasonal closure. The AP may develop recommendations to the Council regarding the extent of Federal waters off Texas that will be closed in 1999 concurrently with the closure of Texas waters. Finally, the Shrimp AP will review a draft of an Options Paper for Amendment 10 to the Shrimp Fishery Management Plan (FMP). Among other alternatives, this options paper contains

provisions for permitting, mandatory reporting, and vessel monitoring.

Although other issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meeting. AP actions will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see ADDRESSES) by December 31, 1998.

Dated: December 16, 1998.

Bruce C. Morehead,

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

[FR Doc. 98-33731 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121598F]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of the Ad Hoc Sustainable Fisheries Amendment Act (SFA) Advisory Panel (AP) and the Standing Scientific and Statistical Committee (SSC).

DATES: The meeting of the SFA AP will begin at 8:00 a.m. on Tuesday, January 5, 1999 and conclude by 4:00 p.m. The meeting of the Standing SSC will begin at 8:00 a.m. on Wednesday, January 6, 1999 and conclude by 4:00 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel - New Orleans, 300 Canal Street, New Orleans, LA; telephone 504-581-1300.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813-228-2815.

SUPPLEMENTARY INFORMATION: The AP, consisting of recreational and commercial fishery representatives, and SSC will review the Sustainable Fisheries Act (SFA) Amendment.

In 1996, Congress passed the SFA. The SFA implemented new requirements for marine fisheries managed by the Gulf Council and other Regional Councils. The Council has responded to this by developing the SFA Amendment which includes alternative management measures for reporting of bycatch by Gulf fishermen, for minimizing bycatch or bycatch mortality, for specifying higher standards for overfishing criteria that will restore fishery stocks to maximum sustainable yield (MSY), for rebuilding periods for overfished stocks (e.g., red snapper, king mackerel, and red drum) and a section identifying communities economically dependent on fishing.

Under the section on reporting of bycatch, five alternatives related to submission of data by fishermen and vessel observers are considered. The Council proposes that NMFS have authority to collect bycatch information by the most appropriate methods, but to use mandatory observers only when the Council agrees.

Under the section on measures to minimize bycatch or bycatch mortality, the Council proposes that stone crab traps used in Federal waters be constructed according to Florida law.

Under the section on overfishing criteria and rebuilding period for stocks, the Council has proposed that MSY, optimum yield (OY), and the overfishing thresholds be set at higher standards as follows: at 26 percent spawning potential ratio (SPR) for red snapper (with OY set at 36 percent SPR); at 30 percent SPR for red drum, all the coastal migratory species (including the mackerels) and for all reef fish species except red snapper, gag, Nassau grouper, and jewfish; at 50 percent SPR for Nassau grouper and jewfish; the Council has not selected a proposal for gag.

The rebuilding periods proposed for overfished stocks are as follows: red snapper by year 2033; king mackerel by 2009; no rebuilding periods are proposed for red drum, Nassau grouper, or jewfish because there was insufficient information to compute the periods.

Similarly, the amendment does not contain proposed overfished thresholds for any of the finfish stocks because there was insufficient information to compute these parameters in terms of biomass (weight). Alternatives for overfished thresholds in terms of SPR are included.

Under the section on overfishing criteria and rebuilding period for stocks for the crustacean fisheries, the Council has proposed that MSY, OY, and the overfishing thresholds be set as follows:

For penaeid shrimp - as the parent stock numbers (as indexed from current virtual population analysis [VPA] procedures) for the 3 penaeid species of shrimp in the Gulf of Mexico at or above the following levels:

Brown Shrimp - 125 million individuals, age 7+ months during the November through February period;

White shrimp - 330 million individuals, age 7+ months during the May through August period;

Pink shrimp - 100 million individuals, age 5+ months during the July through June year.

For royal red shrimp - as 650,000 pounds

For spiny lobster - as 20 percent transitional SPR or SSBR (spawning stock biomass per recruit), except OY is set at 30 percent SPR.

For stone crab - as the harvest that results from a realized egg production per recruit at or above 70 percent of potential production. This harvest capacity is currently estimated at between 3.0 and 3.5 million pounds (MP) of claws (minimum 70mm propodus length).

Overfished thresholds are specified as one-half of MSY or slightly higher for the crustacean stocks, none of which are overfished.

The effect of specifying overfishing criteria at a higher level for the finfish stocks is that additional stocks may be classified as overfished when NMFS approves the SFA amendment in 1999. The amendment also identified Gulf fishing communities dependent on fishing so that eventually the impact of fishery management measures on these communities can be assessed.

Although other issues not on the agenda may come before the AP and SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meeting. Actions will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see ADDRESSES) by December 29, 1998.

Dated: December 16, 1998.

Bruce C. Morehead,

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

[FR Doc. 98-33732 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121598E]

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Demersal Committee and Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board will hold a public meeting.

DATES: The meeting will be held on Thursday, January 14, 1999 from 10:00 a.m. until 2:00 p.m.

ADDRESSES: This meeting will be held at the Ramada Plaza Hotel, Old-Town, 901 North Fairfax Street, Alexandria, VA; telephone: 703-683-6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss possible changes in the commercial and recreational management systems for summer flounder, scup, and black sea bass and make recommendations on the development of amendments to the plan.

Although other issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see ADDRESSES) at least 5 days prior to the meeting date.

Dated: December 16, 1998.

Bruce C. Morehead,

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

[FR Doc. 98-33730 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121598A]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Large Pelagics Oversight and Social Sciences Advisory Committees in January, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: See SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: See SUPPLEMENTARY INFORMATION for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231-0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, Massachusetts 01906-1097; telephone: (781) 231-0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, January 4, 1999 10:00 a.m.— Large Pelagics Committee Meeting
Location: Council Office conference room; 5 Broadway (Route 1 South); Saugus, MA 01906; telephone: (781) 231-0422.

The committee will develop Council comments on the Draft Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.

Friday, January 22, 1999 10 a.m.— Social Sciences Advisory Committee Meeting

Location: Council Office conference room; 5 Broadway (Route 1 South); Saugus, MA 01906; telephone: (781) 231-0422.

The committee will develop recommendations on information to be included in the Stock Assessment and Fishery Evaluation (SAFE) Reports and social and economic impacts analyses in New England Council fishery management plans.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see ADDRESSES) at least 5 days prior to the meeting dates.

Dated: December 16, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 98-33724 Filed 12-18-98; 8:45 am]
BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121598C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (work session).

SUMMARY: The Pacific Fishery Management Council's Salmon Technical Team (STT) will hold a work session which is open to the public.

DATES: The work session will begin at 10:00 a.m. on Tuesday, January 19, 1999 and continue from approximately 8:00 a.m. to 5:00 p.m. each day through Friday, January 22, 1999.

ADDRESSES: The work session will be held at the Council office in Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. John Coon, Salmon Management Coordinator; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The purpose of the STT work session is to draft the "Review of 1998 Ocean Salmon Fisheries." The final report will be distributed to the public and reviewed by the Council at its March 1999 meeting in Portland, OR.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

The work session is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326-6352 at least 5 days prior to the work session date.

Dated: December 16, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 98-33723 Filed 12-18-98; 8:45 am]
BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121098A]

Endangered Species; Permits

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

ACTION: Receipt of an amendment to an application for a scientific research permit (1122); Issuance of a modifications to a scientific research permit (984)

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received an amended permit application from the Bureau of Land Management, Roseburg District Office at Roseburg, OR (BLM) (1122); and NMFS has issued a modification to a scientific research permits to Dr. Mary L. Moser, of the Center for Marine Science Research (984).

DATES: Written comments or requests for a public hearing on the applications must be received on or before January 20, 1999.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

For permit 1122: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232-4169 (503-230-5400).

For permit 984: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301-713-1401).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401).

FOR FURTHER INFORMATION CONTACT: For permit 1122: Tom Lichatowich, Portland, OR (503-230-5438).

For permit 984: Terri Jordan, Silver Spring, MD (301-713-1401)

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227).

Those individuals requesting a hearing on the requests for a permit should set out the specific reasons why a hearing would be appropriate (see ADDRESSES). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Issuance of permits and permit modifications, as required by the ESA, is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Permits and modifications are issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in This Notice

The following species are covered in this notice: Cutthroat trout (*Oncorhynchus clarki clarki*), Coho salmon (*Oncorhynchus kisutch*), and Shortnose sturgeon (*Acipenser brevirostrum*).

To date, protective regulations for threatened Oregon Coast coho salmon

(OCCS) under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of an application requesting takes of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of threatened OCCS. The initiation of a 30-day public comment period on this application, including the proposed take of threatened OCCS, does not presuppose the contents of the eventual protective regulations.

Application Received

BLM (1122) has submitted an amendment to an application for a 5-year permit that would authorize takes of juvenile, threatened, OCCS associated with scientific research. The notice of receipt for the original application, requesting authorization for annual direct takes of juvenile, endangered, Umpqua River cutthroat trout (URCT) associated with the research was published in the **Federal Register** on March 6, 1998 (63 FR 11220). The research is designed to determine migration patterns, life history strategies, and distribution/abundance of ESA-listed fish. The information will benefit wild populations by identifying important habitat areas for protection and restoration efforts. BLM proposes to use screw traps during the juvenile fish outmigration period of March through June to estimate abundance in selected sub-basins. ESA-listed juvenile fish are proposed to be captured, marked, released upstream of the trap, and recaptured to determine trap efficiencies. ESA-listed juvenile fish indirect mortalities associated with the scientific research activities are also requested.

Modification Issued

On November 17, 1998, NMFS issued modification 2 to permit 984 to Dr. Mary Moser, authorizing the use of hatchery bred shortnose sturgeon to document predation on juvenile shortnose sturgeon by flathead and blue catfish, which are non-indigenous predators and are abundant in many rivers of the southeastern United States. The draft recovery plan for shortnose sturgeon identifies the importance of determining the effects of non-indigenous species on wild sturgeon populations. This information is particularly important due to the rapid proliferation of these introduced ictalurids in many river systems that support shortnose sturgeon. It is anticipated that all cultured shortnose sturgeon used in these experiments will be either eaten by catfish or euthanized at the end of the study. There will be no release of cultured shortnose sturgeon into the

wild under any circumstances. A portion of the dead fish will be donated to the North Carolina Museum of Natural Sciences and to the University of North Carolina-Wilmington teaching collection. Modification 2 is valid for the duration of the permit, which expires on December 31, 2000.

Dated: December 14, 1998.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98-33727 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121498B]

Endangered Species; Permits

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

ACTION: Receipt of an application for an incidental take permit (1188).

SUMMARY: Notice is hereby given that the Idaho Department of Fish and Game at Boise, ID (IDFG) has applied in due form for a permit that would authorize incidental takes of endangered and threatened anadromous fish species.

DATES: Written comments or requests for a public hearing on the application must be received on or before January 20, 1999.

ADDRESSES: The application and related documents are available for review, by appointment, at:

Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232-4169 (503-230-5400).

Written comments or requests for a public hearing should be submitted to the Chief, PRD in Portland, OR.

FOR FURTHER INFORMATION CONTACT: Robert Koch (503-230-5424).

SUPPLEMENTARY INFORMATION: IDFG requests a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227).

IDFG requests a 5-year permit that would authorize annual incidental takes of endangered Snake River sockeye salmon (*Oncorhynchus nerka*); threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon

(*Oncorhynchus tshawytscha*); and threatened Snake River steelhead (*Oncorhynchus mykiss*) associated with IDFG's resident fish-stocking program. IDFG's fish-stocking program is designed to increase the supply of fish in the Salmon River and its tributary streams and lakes for sport-angling. The new permit is proposed to replace incidental take permit 908 which is due to expire on December 31, 1998. IDFG proposes to stock: (1) Catchable (mean total length up to 250 mm) hatchery rainbow trout in waters of the upper Salmon River and the Stanley Basin lakes, including Redfish Lake; (2) catchable or subcatchable cutthroat trout in the Stanley Basin lakes, including Redfish Lake; (3) subcatchable (5-20 cm) rainbow trout into the Salmon and Clearwater Rivers and the Stanley Basin lakes; and (4) westslope cutthroat trout into native areas of the Salmon River and tributaries for population restoration purposes. Rainbow and cutthroat trout stocking in Idaho may result in incidental takes of ESA-listed fish through predation, competition, transmission of diseases, and interbreeding. IDFG included a conservation plan with the application that specifies procedures to be implemented to monitor, minimize, and mitigate ESA-listed fish takes.

On May 30, 1997, NMFS published a notice in the **Federal Register** (62 FR 29330) proposing to amend permit 908. On June 10, 1998, NMFS published a notice in the **Federal Register** (63 FR 31739) that an application was received from IDFG for modification 2 to permit 908. To date, NMFS has not completed these proposed actions. When permit 908 expires on December 31, 1998, the two proposed actions cited above will no longer be considered valid for processing. However, the proposed actions are included in IDFG's application for a new permit.

To date, protective regulations for threatened Snake River steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of an application requesting takes of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of Snake River steelhead. The initiation of a 30-day public comment period on the application, including its proposed takes of Snake River steelhead, does not presuppose the contents of the eventual protective regulations. Those individuals requesting a hearing on the above application should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the

discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: December 14, 1998.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98-33728 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120998A]

Marine Mammals; File No. 633-1483

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Center for Coastal Studies, P.O. Box 1036, Provincetown, MA 02657, has applied in due form for a permit to take right whales (*Eubalaena glacialis*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before January 20, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930-2298 (978/281-9250).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the

comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The applicant seeks authorization to: (1) conduct behavioral observations of, and photo-identify Northern right whales (*Eubalaena glacialis*) during aerial and vessel surveys; (2) place VHF tags on right whales during the course of vessel surveys; (3) collect skin and blubber biopsy samples and sloughed skin; and (4) export skin samples for genetic analysis.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 15, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98-33726 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121098C]

Marine Mammals; Scientific Research Permit (PHF# 924-1484)

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Marsha L. Green, Ph.D., Department of

Psychology, Albright College, P.O. Box 15234, Reading, PA 19612-5234, has applied in due form for a permit to take North Pacific humpback whales (*Megaptera novaeangliae*).

DATES: Written comments must be received on or before January 20, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (562/980-4001); and

Protected Species Program Manager, Pacific Islands Area Office, 2570 Dole Street, Room 106, Honolulu, HI 9682-2396 (808/973-2987).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak or Trevor Spradlin, 301/713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222.23).

The purpose of the proposed research is to evaluate the behavior of whales in the presence of vessels. The research goals are to more precisely delineate which vessel parameters and approach techniques cause changes in humpback whale behavior and to more clearly define the interactive effect of size of vessel and engine loudness. Humpback whales may be harassed during controlled vessel approaches and surface and underwater observations and recordings of whale behavior and

social sounds. The proposed research would be conducted in Hawaiian waters between Maui and Lanai and off the northwest coast of Hawaii between Kona and Hawi from January 1, 1999 through May 15, 2004.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 14, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98-33729 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Electronic Application for Patent Examiners—Job Application Rating System (JARS)

ACTION: Proposed collection; comment request

SUMMARY: The Department of Commerce (DoC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 19, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of

Vivian Clark at P.O. Box 171, Washington, DC, 20231, by telephone at (703) 305-8227, or by facsimile transmission to (703) 305-9864.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Patent and Trademark Office (PTO) is developing an electronic Job Application Rating System (JARS) to assist in the hiring of 550 new patent examiners in FY 1999.

The PTO has received hiring assistance from the Office of Personnel Management (OPM) through the use of their electronic application system called MARS. The PTO has found that the services provided by MARS do not meet current hiring needs.

In the current employment environment, Information Technology professionals and Engineering graduates are in great demand. The PTO is in direct competition with private industry for the same caliber of candidates with the requisite knowledge and skills to perform patent examination work.

Consequently, it is imperative that every available technology be employed if the PTO is to remain competitive, meet the hiring goal, and fulfill the agency's congressional commitment to reduce the pendency rate for the examination of patent applications. The information supplied to the PTO by an applicant seeking a Patent Examiner position with the PTO will assist the Human Resources Specialists and hiring managers in determining whether an applicant possesses the basic qualification requirements for the Patent Examiner position. In addition, the electronic transmission of this information will expedite the hiring process by eliminating the time used in the mail distribution process.

JARS will provide the PTO a more user friendly online employment application process for applicants and will enable the PTO to process hiring actions in a more efficient and timely manner. The online application will provide an electronic real time candidate inventory that will allow the PTO to review applications from potential applicants almost instantaneously. Given the immediate hiring need of the Patent Examining Corps, time consumed in the mail distribution system or paper review of applications delays the decision making

process by several weeks. The implementation of the JARS system will result in increased speed and accuracy in the employment process. It will also streamline labor and reduce costs.

The use of the JARS online application fully meets the intent of 5 U.S.C. 2301, which requires adequate public notice to assure open competition by guaranteeing that necessary employment information will be accessible and available to the public on inquiry.

Since the JARS online application will be used as an alternative form of employment application, the collection and use of the information requires OMB approval as outlined in section 5.1 of the Delegated Examining Operations Handbook. The Handbook provides guidance to agencies under a delegated examining authority by OPM, under the provisions of Title 5, U.S. Code, Chapter 11, Section 1104.

II. Method of Collection

The application information is collected electronically from the applicant. Applicants may contact the PTO Web site on the Internet where they will find the application form. They can fill the form out while connected to the web site. For those applicants who do not have access to a personal computer, applications are available in the Personnel Office at the PTO or the applicant can go to the local library to complete an application.

III. Data

OMB Number: 0651-XXXX.

Type of Review: New information collection.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, state, local or tribal governments, and the Federal Government.

Estimated Number of Respondents: 3,700 respondents per year.

Estimated Time Per Response: It is estimated that it will take from 20 minutes to one hour to complete the application, depending on the situation. On average, the time to complete the online application is estimated to be 30 minutes.

Estimated Total Annual Respondent Burden Hours: 1,850 hours per year.

Estimated Total Annual Respondent Cost Burden: \$323,750 per year.

Title of form	Form Nos.	Estimated time for response	Estimated annual burden hours	Estimated annual response
Electronic Employment Application	New Form #####	30 minutes	1,850	3,700

Title of form	Form Nos.	Estimated time for response	Estimated annual burden hours	Estimated annual response
Totals	1,850	3,700

Note: The burden hours estimated above are based on the average time (30 minutes) that the PTO expects it will take to complete the online application. Depending on the situation, it could take as little as 20 minutes or as much as one hour to complete the online application. The burden hours for this information collection could range from 1,233 to 3,700 burden hours.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 15, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98-33698 Filed 12-18-98; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). A notice of proposal for collection of information was published on July 22, 1998 (Volume 63, Number

140, page 39273-39274). Subsequently, the Department of Defense, with concurrence of OMB, withdrew the proposal from review due to extensive revision to AF Form 56.

Title, Associated Form, and OMB Number: Application for Training Leading to a Commission in the United States Air Force; AF Form 56; OMB Number 0701-0001.

Type of Request: Reinstatement.

Number of Respondents: 2,900.

Responses per Respondent: 1.

Annual Responses: 2,900.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 967.

Needs and Uses: The information collection requirement is necessary for providing information to determine if applicant meets qualifications established for training leading to a commission. Air Force selection boards use the information to determine suitability for officer training. Information contained on AF Form 56 supports the Air Force as it applies to officer training (procurement) programs for civilian and military applicants. It is imperative that only persons fully qualified for receipt of Air Force commissions are selected for the training leading to commissioning. Data supports the Air Force in verifying the eligibility of applicants and in the selection of those best qualified for dedication of funding and training resources. Eligibility requirements are outlined in Air Force Instruction 36-2013, "Officer Training School (OTS) and Airman Commissioning Programs." **Affected Public:** Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should

be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: December 14, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-33640 Filed 12-18-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 13 January 1999 (900 am to 1600 pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340-5100.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340-1328 (202) 231-4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: December 14, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-33641 Filed 12-18-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting**

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board has been scheduled as follows:

DATES: 11 January 1999 (12:00 pm to 4:00 pm); 12 January 1999 (8:00 am to 4:00 pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340-5100.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340-1328 (202) 231-4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: December 14, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-33642 Filed 12-18-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE**Office of the Secretary of Defense****Meeting of the DoD Advisory Group on Electron Devices**

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, January 21, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. § 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: December 11, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-33643 Filed 12-18-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE**Office of the Secretary of Defense****Meeting of the DoD Advisory Group on Electron Devices**

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Friday, January 22, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Timothy Doyle, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square

Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. § 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: December 11, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-33644 Filed 12-18-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE**Office of the Secretary of Defense****Meeting of the DOD Advisory Group on Electron Devices**

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, January 20, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to

provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. § 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552(b)(3)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: December 11, 1998.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-33645 Filed 12-18-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, January 19, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense

Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. § 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552(b)(3)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: December 11, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-33646 Filed 12-18-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Panel Chair Meeting for Technology Options to Leverage Aerospace Power In Other Than Conventional War Situations in support of the HQ USAF Scientific Advisory Board will meet at ANSER Conference Complex, Arlington, VA on January 7, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to determine the approach for the 1999 Summer Study on Technology Options to Leverage Aerospace Power In Other Than Conventional War Situations. The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697-8404.

Carolyn Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 98-33755 Filed 12-18-98; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-51-003]

Algonquin Gas Transmission Company; Notice of Supplemental Compliance Filing

December 15, 1998.

Take notice that on December 8, 1998, Algonquin Gas Transmission Company (Algonquin) submitted for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to become effective January 11, 1999:

Second Revised Sheet No. 658A

Second Revised Sheet No. 658B

Fifth Revised Sheet No. 659

Fourth Revised Sheet No. 660

Algonquin asserts that the above listed tariff sheets are being filed to supplement Algonquin's earlier filings in the Docket Nos. RP99-51-000 and RP99-51-001 to comply with the Commission's Order No. 587-H, Final Rule Adopting Standards for Intra-day Nominations and Order Establishing Implementation Date (Order No. 587-H) issued on July 15, 1998, in Docket No. RM96-1-008. Algonquin states that in its answer to a protest filed by Yankee Gas Services Company (Yankee) asserting that Algonquin's filings eliminated the flexibility in Algonquin's tariff to make hourly nomination changes, Algonquin stated that it had reevaluated the nomination flexibility in its filings and that it would submit tariff sheets to reinstate the flexibility which existed prior to Algonquin's filings in the referenced dockets, with the addition of the GISB intraday requirements as minimum standards. Algonquin states that these tariff sheets incorporate to the maximum extent possible the nomination flexibility previously included in Algonquin's Tariff.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin and interested sate commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-33673 Filed 12-18-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99-4-23-000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 15, 1998.

Take notice that on December 10, 1998 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Certain revised tariff sheets in the above captioned docket, bear a proposed effective date of January 1, 1999.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules SST and FSS, the costs of which comprise the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-33669 Filed 12-18-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99-6-000]

Lake Benton Power Partners L.L.C.; Notice of Filing

December 11, 1998.

Take notice that on December 1, 1998 and December 8, 1998, Lake Benton Power Partners L.L.C. (Applicant) filed updates to its application under Section 203 of the Federal Power Act. On December 1, 1998, Applicant filed a chart to reflect a change in the ownership structure of Applicant following the proposed transaction. On December 8, 1998, Applicant filed the agreement necessary to effect the transaction, as required by the Commission's regulations (18 CFR 33.3).

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before December 21, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to be come 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,

Secretary.

[FR Doc. 98-33668 Filed 12-18-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-797-000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Veazie Lateral Project and Request for Comments on Environmental Issues

December 15, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the

facilities, about 1.1 miles of 12-inch-diameter pipeline, valves, and a metering facility, proposed in the Veazie Lateral Project.¹ This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.²

Summary of the Proposed Project

Maritime & Northeast Pipeline, L.L.C. (Maritimes) wants to expand the capacity of its facilities in Maine to transport up to 105,000 Dekartherms per day of natural gas to a new electric generation facility (Maine Independence Station). Maritimes seeks authority to construct and operate the following facilities in Penobscot County, Maine:

- 1. miles of 12-inch-diameter pipeline;
- a side valve and remote blow-off facility; and
- a metering facility.

The location of the project facilities is shown in appendix 3. If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the proposed facilities would require about 11.8 acres of land. Following construction, about 0.2 acre would be maintained as new above

¹ Maritimes' application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

² The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

ground facility sites (valve, remote blow-off, and metering facility). In addition 4.3 acres would be retained as permanent right-of-way. The remaining 7.3 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires that the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- public safety
- land use
- cultural resources
- air quality and noise
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the

instructions in the public participation section on pages 4 and 5 of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Maritimes. This preliminary list of issues may be changed based on your comments and our analysis.

- One federally listed threatened species may occur in the proposed project area.
- The Penobscot River would be crossing by a directional drill.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdiction facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR-11.2;
- Reference Docket No. CP98-797-000; and
- Mail your comments so that they will be received in Washington, DC on or before January 18, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to

the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208-1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98-33674 Filed 12-18-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98-2-59-004]

Northern Natural Gas Company; Notice of Compliance Filing

December 15, 1998.

Take notice that on December 10, 1998, Northern Natural Gas Company (Northern), filed a response in compliance with the Commission's Order Accepting Tariff Sheets Subject To Conditions dated November 25, 1998.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98-33670 Filed 12-18-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-220-000]

NYSEG Solutions, Inc.; Notice of Issuance of Order

December 15, 1998.

NYSEG Solutions, Inc. (NYSEG Solutions), an energy services company which is affiliated with NYSEG, a traditional electric utility, filed an application requesting that the Commission authorize it to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, NYSEG Solutions requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by NYSEG Solutions. On December 14, 1998, the Commission issued an Order Granting Waiver Of Notice And Conditionally Accepting For Filing Tariffs For Market-Based Power Sales And Reassignment Of Transmission Rights (Order), in the above-docketed proceeding.

The Commission's December 14, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days after the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by NYSEG Solutions should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, NYSEG Solutions is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object

within the corporate purposes of NYSEG Solutions, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of NYSEG Solutions' issuances of securities or assumptions of liabilities.
* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 13, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,
Secretary.

[FR Doc. 98-33675 Filed 12-18-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-159-001]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

December 15, 1998.

Take notice that on December 9, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective December 1, 1998:

First Substitute Second Revised Sheet No. 45 of Rate Schedule FT
Original Sheet No. 45a of Rate Schedule FT
First Substitute First Revised Sheet No. 58b of Rate Schedule FT-NN
First Substitute Third Revised Sheet No. 65 of Rate Schedule IT

Southern states that it files the three substitute and one original tariff sheets to correct an omission of the term "gain" from its November 25, 1998 filing in Docket No. RP99-159-000 and to incorporate the definition of the term "net revenue gain" into its Tariff.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98-33671 Filed 12-18-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-52-003]

Texas Eastern Transmission Corporation; Notice of Supplemental Compliance Filing

December 15, 1998.

Take notice that on December 8, 1998 Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff Sheets to become effective January 11, 1999:

Fourth Revised Sheet No. 487
Fifth Revised Sheet No. 487A
First Revised Sheet No. 487B
First Revised Sheet No. 487C
First Revised Sheet No. 487D
First Revised Sheet No. 487E
Fifth Revised Sheet No. 488
Fourth Revised Sheet No. 488A
Fifth Revised Sheet No. 489
Third Revised Sheet No. 490
Third Revised Sheet No. 491
Third Revised Sheet No. 491A
Second Revised Sheet No. 492

Texas Eastern asserts that the above listed tariff sheets are being filed to supplement Texas Eastern's earlier filings in the Docket Nos. RP99-52-000 and RP99-51-001 to comply with the Commission's Order No. 587-H, Final Rule Adopting Standards for Intra-day Nominations and Order Establishing Implementation Date (Order No. 587-H) issued on July 15, 1998, in Docket No. RM96-1-008.

Texas Eastern states that in its answer to a protest filed by Yankee Gas Services Company (Yankee) asserting that Texas Eastern's filings eliminated the flexibility in Texas Eastern's tariff to make hourly nomination changes, Texas Eastern stated that it had reevaluated the nomination flexibility in its filings and that it would submit tariff sheets to reinstate the flexibility which existed prior to Texas Eastern's filings in the referenced dockets, with the addition of the GISB intraday requirements as minimum standards. Texas Eastern

states that these tariff sheets incorporate to the maximum extent possible the nomination flexibility previously included in Texas Eastern's Tariff.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-33672 Filed 12-18-98; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6206-3]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at (202) 260-2740, or E-mail at

"farmer.sandy@epamail.epa.gov", and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses To Agency Clearance Requests

OMB Approvals

EPA ICR No. 1591.10; Modifications to Standards and Requirements for Reformulated and Conventional

Gasoline; in 40 CFR Part 80, Subpart D, E, and F; was approved 12/01/98; OMB No. 2060-0277; expires 12/31/2000.

EPA ICR No. 1847.01; Federal Plan Record Keeping and Reporting Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994; in 40 CFR Part 62, Subpart FFF; was approved 12/02/98; OMB No. 2060-0390; expires 12/31/2001.

EPA ICR No. 0783.37; Motor Vehicle Emission Certification and Fuel Economy Compliance; in 40 CFR Parts 86 and 600; was approved 11/30/98; OMB No. 2060-0104; expires 11/30/1999.

OMB's Comments Filed

EPA ICR No. 1889.01; Findings of Significant Contribution and Rule Making Action on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport; in 40 CFR Parts 52, 75, and 97; OMB filed comments only.

EPA ICR No. 1883.01; Federal Implementation Plans to Reduce the Regional Transport of Ozone; in 40 CFR Parts 52, 97, and 98; OMB filed comments only.

Extensions of Expiration Dates

EPA ICR No. 0226.12; Application for NPDES Discharge Permit and the Sewage Sludge Management Permit; in 40 CFR Parts 122 and 501; OMB No. 2040-0086; on 11/23/98 OMB extended the expiration date through 03/31/99.

EPA ICR No. 0029.06; NPDES Modification and Variance Requests; in 40 CFR Part 122; OMB No. 2040-0068; on 11/23/98 OMB extended the expiration date through 02/28/99.

EPA ICR No. 0827.04; Construction Grants Program Information Collection Request; in 40 CFR Part 35, Subpart I; OMB No. 2040-0027; on 11/23/98 OMB extended the expiration date through 02/28/99.

Dated: December 15, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98-33737 Filed 12-18-98; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6206-4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NPDES Modification and Variance Requests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Pollutant Discharge Elimination System (NPDES) Modification and Variance Requests, EPA ICR No. 0029.07, OMB Control No. 2040-0068, expires February 28, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 20, 1999.

FOR FURTHER INFORMATION OR A COPY: Contact Sandy Farmer at EPA by phone at (202) 260-2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 0029.07.

SUPPLEMENTARY INFORMATION:

Title: NPDES Modification and Variance Requests (OMB Control No. 2040-0068; EPA ICR No. 0029.07) expiring 02/28/99. This is a request for extension of a currently approved collection.

Abstract: This ICR calculates the burden and costs associated with modifications and variances made to NPDES permits and to the National Sewage Sludge Management Program permit requirements. The regulations specified at 40 CFR 122.62 and 122.63 specify information a facility must report in order for the U.S. Environmental Protection Agency (EPA) to determine whether a permit modification is warranted. A NPDES permit applicant may request a variance from the conditions that would normally be imposed on the applicant's discharge. An applicant must submit information so the permitting authority can assess whether the facility is eligible for a variance, and what deviation from Clean Water Act (CWA) provisions is necessary. In general, EPA and authorized States use the information to determine whether: (1) the conditions or requirements that would warrant a modification or variance exist, and (2) the progress toward achieving the goals of the (CWA) will continue if the modification or variance is granted. Other uses for the information provided include: updating records on permitted facilities, supporting enforcement actions, and overall program management, including policy and budget development and responding to Congressional inquiries. 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. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 4/30/98 (63 FR 23781); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4.16 hours per response. 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.

Respondents/Affected Entities: NPDES permit applicants that request a variance or modification of the NPDES or sewage sludge management conditions.

Estimated Number of Respondents: 15,594.

Frequency of Response: varies

Estimated Total Annual Hour Burden: 293,323 hours.

Estimated Total Annualized Cost Burden: \$0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0029.07 and OMB Control No. 2040-0068 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: December 15, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98-33738 Filed 12-18-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6204-2]

Final Determination for Prevention of Significant Deterioration Air Quality Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: The purpose of this document is to announce that on November 24, 1997, the Michigan Department of Environmental Quality (MDEQ) issued Central Wayne Limited Partnership a Prevention of Significant Deterioration (PSD) permit approving the modification of two municipal waste incinerators, the reopening and modification of the third waste incinerator and the additional of air pollution equipment, three waste heat steam generators and one turbine generator at 4901 Inkster Road, Dearborn Heights, Michigan. The final action was issued pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21 (43 FR 26403). The time for appealing this decision to the U.S. EPA has expired. Judicial review of the permit decision is available only pursuant to section 307(b)(1) of the Clean Air Act and only by filing a petition for review in the United States Court of Appeals for the Sixth Circuit within sixty (60) days of today's date.

DATES: Judicial review of the issuance of the permit is available only pursuant to section 307(b)(1) of the Clean Air Act and only by filing a petition for review in the United States Court of Appeals for the Sixth Circuit on or before February 19, 1999.

ADDRESSES: Documents relevant to the above action are available for public inspection during normal business hours at the following address (**Note:** It is recommended that you telephone ahead before visiting the MDEQ): State of Michigan, Department of Environmental Quality, Air Quality Division, Hollister Building, P.O. Box 30473, Lansing, Michigan 48909-7973.

Questions on this document may be directed to: Ms. Laura Gerleman, United States Environmental Protection Agency, Region V, 77 West Jackson

Boulevard (AR-18J), Chicago, Illinois 60604-3590, telephone (312) 353-5703.

SUPPLEMENTARY INFORMATION: Central Wayne Energy Limited Partnership owns and operates a municipal waste incinerator facility in Dearborn Heights, Michigan. On November 24, 1997, the Michigan Department of Environmental Quality issued Central Wayne a Prevention of Significant Deterioration (PSD) permit approving certain changes to its municipal waste incinerator facility. The permit was first issued on October 30, 1997, but was then later revised and reissued on November 24 1997.

Only one individual attempted to file a petition for review with the Environmental Appeals Board (Board) objecting to the issuance of the Central Wayne PSD permit. That petition was denied by the Board since it was not timely filed. The Board dismissed the petition with prejudice on February 26, 1998 (PSD Appeal No. 98-1). The Board also denied and dismissed the petitioner's Motion for Reconsideration on March 26, 1998.

The time period established by the Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decision has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to seek judicial review of the final agency action. No petitions for review of this permit have been timely filed with the Administrator.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of this action is available, if at all, only by the filing of a petition for review in the United States Sixth Circuit Court of Appeals within 60 days of publication of today's document. Under section 307(b)(2) of the Clean Air Act, the requirements, which are the subject of today's document, may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Jo Lynn Traub,

Acting Regional Administrator, Region 5.

[FR Doc. 98-33741 Filed 12-18-98; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6206-5]

Transfer of Confidential Business Information to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: EPA will transfer to its contractor, SAIC and its subcontractors: Claremont Technical Group, Inc., DPRA, Inc., ERG, Inc., Hazardous and Medical Services, Inc., Johnston and McLamb CASE Solutions, Inc., Bob Kerr and Associates, Inc., RTI, and Ross Associates Environmental Consulting Ltd. Confidential Business Information (CBI) that has been or will be submitted to EPA under Section 3007 of the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA is involved in activities to support, expand and implement solid and hazardous waste regulations.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than December 31, 1998.

ADDRESSES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703-308-7909.

SUPPLEMENTARY INFORMATION:

1. Transfer of Confidential Business Information

Under EPA Contract 68-W-98-025, SAIC and its subcontractors will assist the Office of Solid Waste, Hazardous Waste Minimization and Management Division, by providing technical support in developing additions and modifications to existing hazardous waste data bases, providing assistance for the LDR program and for hazardous waste treatment capacity determinations, assisting with the development of Information Collection Request, supporting the study of hazardous waste generation and the development of guidance documents, waste minimization assessments, and evaluations of waste minimization options. SAIC also will assist in conducting assessments and studies of management and treatment technologies and of multimedia impacts, provide support with waste and emissions sampling and analysis activities, assist in conducting investigations of waste management practices and in developing a voluntary waste minimization sign-up program. EPA has determined that SAIC and its subcontractors will need access to RCRA CBI submitted to the Office of Solid Waste to complete this work.

In accordance with 40 CFR 2.305(h) (see 42 U.S.C. 6927(b)), EPA has determined that SAIC and its subcontractors require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is submitting this notice to inform all submitters of CBI of EPA's intent to transfer CBI to these firms on a need-to-know basis. Upon completing its review of materials submitted, SAIC and its subcontractors will return all CBI to EPA.

EPA will authorize SAIC and its subcontractors access to RCRA CBI under the conditions and terms in EPA's "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual". Prior to transferring CBI to SAIC and its subcontractors, EPA will review and approve its security plans and SAIC and its subcontractors will sign non-disclosure agreements.

Dated: December 1, 1998.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98-33739 Filed 12-18-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6205-7]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended by the Superfund Amendments and Reauthorization Act, Arkansas River Ranch

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notification is hereby given that a Proposed Prospective Purchaser Agreement (PPA) associated with the Arkansas River Ranch property (Property) located in Lake County, Colorado was executed by the United States Department of Justice. This Agreement is subject to final approval after the comment period. The PPA would resolve certain potential EPA claims under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), and would resolve certain potential U.S. Department of Interior claims under

section 107 of CERCLA and section 311(b)(3) of the Clean Water Act, against the State of Colorado, acting by and through the Division of Parks and Outdoor Recreation, the prospective purchaser (purchaser).

The settlement would require the purchaser to provide maintenance and monitoring of areas within the Property where response and/or restoration activities have occurred, cooperate in establishing, if necessary, land use restrictions on portions of the Property, and to maintain the Property as open space, parks, wildlife habitat and recreational space. The purchaser intends to use the purchased property for open space, parks, wildlife habitat and recreational space. The purchaser agreed to provide EPA with an irrevocable right of access to the Property, to conduct all activities in compliance with all applicable local, State, and federal laws and regulations, and to exercise due care at the Property.

The purchaser will record a certified copy of the PPA with the local Clerk and Recorder's Office, and thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to the Agreement.

For Fourteen (14) days following the date of publication of this document, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado 80202.

Availability

The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado 80202. A copy of the proposed Agreement may be obtained from Richard Sisk (8ENF-L), Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado 80202. Comments should reference the "Arkansas River Ranch Prospective Purchaser Agreement" and should be forwarded to Richard Sisk at the above address.

FOR FURTHER INFORMATION CONTACT: Richard Sisk (8ENF-L), Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado 80202. (303) 312-6638.

It is so agreed:

Dated: December 11, 1998.

Sharon Kercher,

Acting Assistant Administrator, Office of Enforcement, Compliance, and Environmental Justice, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 98-33743 Filed 12-18-98; 8:45 am]

BILLING CODE 6560-50-P

FARM CREDIT ADMINISTRATION

[BM-10-DEC-98-03]

Farm Credit System Service to Young, Beginning, and Small Farmers and Ranchers

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: The Farm Credit Administration (FCA) Board recently adopted a policy statement encouraging the Board of Directors of each Farm Credit System (FCS or System) institution to renew its commitment to providing credit and related services to young, beginning, and small farmers, ranchers, and producers or harvesters of aquatic products (YBS borrowers). The policy addresses the FCA Board's position on the System's YBS service and coordination while maintaining safe and sound lending programs.

EFFECTIVE DATE: December 10, 1998.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst or John C. Moore, Chief Economist, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or

Joy Strickland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The FCA Board adopted a policy statement concerning YBS borrowers on December 10, 1998. The policy addresses the FCA Board's position on the System's YBS service, coordination, and safety and soundness.

The System was founded in order to be a reliable and affordable source of credit for farmers and ranchers. As agriculture evolved, the System has been granted additional authorities to ensure that it remained a competitive and reliable source of credit. One such Congressional action was the Farm Credit Act Amendments of 1980 (1980 Amendments), which required System institutions operating under titles I and II of the Act of 1971, as amended, to have programs serving the credit and

other special needs of YBS farmers. Congress placed special emphasis on System institutions coordinating their programs with other System institutions, with non-System lenders, governmental entities, and other organizations. The amendments also required that the results of such programs be reported to us, and that we summarize the System's activities in an annual report to Congress.

We are renewing our focus on the System's YBS programs for several reasons: (1) The Congress, YBS borrowers, and the general public expect the FCS to have active and effective programs to address this sector of rural America; (2) the System's improved financial health places it in a much better position to serve these agricultural borrowers; and (3) our reporting requirements need to be updated to reflect the current circumstances in agriculture. The definitions used by System institutions for reporting on the results of their YBS programs have not been significantly updated since they were first adopted subsequent to the 1980 Amendments.

Young and beginning farmers are the future for American agriculture. Small farmers play an important role too. Each have unique needs for credit and other services. We are refocusing our efforts to ensure that the System is responsive to YBS borrowers' needs and is a reliable lender for future generations. We believe the FCS institutions should meet those needs constructively and on a safe and sound basis.

The policy statement, in its entirety, follows

Policy Statement on Farm Credit System Service to Young, Beginning, and Small Farmers and Ranchers

[BM-10-DEC-98-03; FCA-PS-75]

Effective Date: December 10, 1998.

Effect on Previous Action: None.

Source of Authority: Sections 4.19 and 5.17(11) of the Farm Credit Act of 1971, as amended.

The Farm Credit Administration Board Hereby Adopts The Following Policy Statement:

The Farm Credit Administration (FCA) Board issues this policy statement concerning Farm Credit System (FCS or System) institutions providing sound and constructive credit and related services to young, beginning, and small farmers, ranchers, and producers or harvesters of aquatic products (YBS borrowers).

I. Public Purpose

The System was created to fulfill a public purpose to finance agriculture. In 1980, Congress obligated System

institutions operating under titles I and II of the Farm Credit Act of 1971, as amended, to establish programs that respond to the credit and related needs of YBS borrowers that result in sound, adequate, and constructive credit and closely related services.¹ Each Board of Directors within the System should renew its commitment to be a reliable, consistent, and constructive lender for YBS borrowers.

II. Guiding Principles

YBS Service: We believe that the System currently serves the needs of a significant number of YBS borrowers but more can be done. We also believe Congress intended special efforts by the System to serve YBS borrowers. We expect the Board of Directors of each System institution to be actively involved in the oversight of YBS programs. This includes establishing goals and objectives and periodically evaluating the results of its YBS program.

We encourage the System to better serve YBS borrowers by looking at the existing statutory and regulatory authorities and developing innovative and sound programs. Some areas to consider include loan participations, capital pooling, and alliances and joint ventures to share program successes and risks. We believe these additional efforts will benefit the FCS by ensuring a strong customer base in the future and believe YBS borrowers will benefit from a reliable FCS.

YBS Coordination: We believe that System institutions could take better advantage of coordinating their YBS activities with other parties. Active participation with guarantors such as the United States Department of Agriculture and the Small Business Administration can help manage an institution's credit risk. Organizations exist in many States that bring together lenders and applicants with specific needs that are not being addressed through conventional lending. We encourage System institutions to explore opportunities to participate with such organizations. We believe that well-coordinated programs provide additional opportunities to YBS borrowers.

YBS Safety and Soundness: We believe that lending to YBS borrowers can be done on a safe and sound basis. Offering YBS borrowers reliable and continual access to credit and services is a critical element of the mission of each title I and title II direct lender of the FCS. The System is currently in a

¹ Sections 1.1 and 4.19 of the Farm Credit Act of 1971, as amended.

sound financial position and able to better focus its YBS programs as a part of its overall loan portfolio management and its risk management programs. Each Board of Directors should identify risk parameters for YBS lending that are appropriate in relation to the institution's risk-bearing capacity and its YBS program objectives.

III. Sound YBS Programs and Policies

Each direct lender association is required to adopt policies that establish programs to provide credit and related services to YBS borrowers.² Board policies should define the program's purpose and objectives, operating parameters for management, delegated and retained authorities of the board, exception processes, and requirements for reporting to the association's board.

IV. Definitions

To better reflect the current demographics of agricultural producers, the FCA defines a young farmer as 35 years or younger; a beginning farmer as having 10 years or fewer farming, ranching, or aquatic experience; and a small farmer as generating less than \$250,000 in annual gross agricultural or aquatic sales. These new definitions are effective for the reports filed with the FCA as of December 31, 1998.

Dated: December 15, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.
[FR Doc. 98-33670 Filed 12-18-98; 8:45 am]

BILLING CODE 6705-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capital Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 207-011371-003.

Title: H. Stinnes Linien GmbH.

Parties:

Hugo Stinnes Schiffahrt GmbH
DSR-Senator Lines GmbH
H. Stinnes Linien GmbH

Synopsis: The proposed modification would change the name of the joint

service agreement from the DSR/Stinnes West Indies Service to H. Stinnes Linien GmbH; change the name of the joint service, which is also a party to the agreement; add the Dominican Republic to the Geographic scope; and restate the agreement.

Agreement No.: 232-011642.

Title: East Coast United States/East Coast South America Vessel Sharing Agreement.

Parties:

A.P. Moller-Maersk Line
Sea-Land Service, Inc.
P&O Nedlloyd, Ltd.
P&O Nedlloyd, B.V.
Compania Sud Americana de Vapores, S.A.
Euroatlantic Container Line S.A.
Braztrans Transportes Maritimos Limitada
Alianca Transportes Maritimos, S.A.
Columbus Line

Synopsis: The proposed agreement authorizes the parties to operate and share space on up to 14 vessels in the trade, with no vessel having a capacity over 2,000 TEUs. The parties may charter vessels to and from each other and redeploy vessels in the trade. They may also interchange containers and related equipment, and may agree between themselves and with third parties for the use of terminal facilities and other shoreside services and supplies. The parties have requested expedited review.

Dated: December 15, 1998.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98-33686 Filed 12-18-98; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[File No. 9810153]

Asociacion de Farmacias Region de Arecibo, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 19, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Gary H. Schorr or Steven J. Osnowitz, FTC/s-3115 601 Pa. Ave., N.W., Washington, D.C. 20580, (202) 326-3063 or (202) 326-2746.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 14, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (Commission) has accepted, subject to final approval, an agreement to a proposed consent order from the Asociacion de Farmacias Region de Arecibo ("AFRA") and Ricardo Alvarez Class ("Alvarez"). AFRA is an organization of approximately 125 pharmacies operating in northern Puerto Rico and Alvarez, a pharmacy owner in Manati, Puerto Rico, is one of AFRA's officers. The agreement settles charges that the proposed respondents violated Section 5 of the Federal Trade Commission Act by fixing the terms and conditions, including prices, under which AFRA's members would contract with a third party payer to provide

² 12 CFR 614.4165

services to indigents under Puerto Rico's Health Insurance Act of 1993 (the "Reform"), and by threatening to withhold services if AFRA's terms were not met.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the agreement. The analysis is not intended to constitute an official interpretation of either the proposed complaint or the proposed consent order, or to modify their terms in any way.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by either of the proposed respondents that the law has been violated as alleged in the complaint.

Summary of the Complaint Allegations

The Administracion de Seguros de Salud ("ASES"), a public corporation, implements and administers the Reform, the Puerto Rico government program designed to provide health care to the indigent and certain other residents of Puerto Rico. ASES has divided Puerto Rico into regions, soliciting bids for each region from payers to organize and provide services for beneficiaries. ASES currently selects one payer with which to contract per region. That payer then contracts with providers, including hospitals, physicians, pharmacies, and dentists. After reviewing bids from several payers, ASES selected Triple-S to administer the North Region of the Reform beginning April 1, 1995. The North Region consist of the municipalities of: Arecibo, Barceloneta, Camuy, Ciales, Florida, Hatillo, Lares, Manati, Morovis, Quebradillas, Utuado, and Vega Baja. The combined population of these municipalities is 434,000, of whom 260,000 are beneficiaries of the Reform.

Respondent AFRA, whose members are located in the North Region of the Reform, was formed on November 22, 1994, as a vehicle for its members to jointly negotiate with health plans. Each AFRA member agreed that AFRA would serve as its bargaining agent. Respondent Alvarez served as AFRA's president from its inception until March 1997, and is currently its treasurer. Alvarez provided the leadership

necessary to unite otherwise competing pharmacies, and directed AFRA's efforts to set prices and other terms for participation in the Reform by its members.

In January 1995, AFRA began negotiating on behalf of its members with Triple-S. Alvarez served as AFRA's chief spokesman and negotiator. AFRA sought to increase compensation for its members, and to require Triple-S to contract with all AFRA members who were interested in providing services. Alvarez exhorted AFRA's members to refuse to sign contracts with Triple-S until advised to do so by AFRA. The refusal by AFRA members to provide services caused Triple-S to raise the fees paid to AFRA members, so that they would have a viable network of pharmacies to provide services under the Reform.

In March 1996, Triple-S lowered the fees paid to AFRA member pharmacies. In response, AFRA, under Alvarez's leadership and guidance, threatened to withhold its members' services as of June 10, 1996, unless Triple-S rescinded its fee schedule and increased reimbursement to its members. Thereafter, Triple-S acceded to AFRA's demands. The new fee schedule amounted to a 22% increase over the March 1996 fee schedule.

AFRA's members have not integrated their practices in any economically significant way, nor have they created efficiencies sufficient to justify their acts or practices described above.

The complaint alleges that the proposed respondents, by fixing the compensation upon which pharmacies would participate in the Reform, raised the cost of pharmacy goods and services to be furnished to the beneficiaries of the Reform, and thereby deprived the Commonwealth of Puerto Rico, payers, and consumers of the benefits of competition among pharmacies.

The Proposed Consent Order

The proposed consent order would prohibit the proposed respondents from concertedly 1) negotiating on behalf of any pharmacies with any payer or provider; 2) refusing to deal, boycotting, or threatening to boycott any payer or provider; 3) determining any terms, conditions, or requirements upon which pharmacies will deal with any payer or provider, including, but not limited to, terms of reimbursement; or 4) restricting the ability of pharmacies to deal with payers individually or through any arrangement outside of AFRA.

The proposed consent order would, however, allow either of the proposed respondents to engage in conduct (including collectively determining

reimbursement and other terms of contracts with payers) that is reasonably necessary to operate (a) any "qualified risk-sharing joint arrangement," or (b) upon prior notice to the Commission, any "qualified clinically integrated joint arrangement."

For the purposes of the order, a "qualified risk-sharing joint arrangement" must satisfy two conditions. First, participating pharmacies must share substantial financial risk. The order lists ways in which pharmacies might share financial risk. Second, the arrangement must be non-exclusive, both in name and in fact. The order does not permit arrangements that either restrict the ability of participating pharmacies to contract outside the arrangement (individually or through other networks) with third-party payers, or facilitate refusals to deal outside the arrangement by participating pharmacies.

For the purposes of the order, a "qualified clinically integrated joint arrangement" includes arrangements in which the pharmacies undertake cooperative activities to achieve efficiencies in the delivery of clinical services, without necessarily sharing substantial financial risk. For purposes of the order, such arrangements are ones in which the participating pharmacies have a high degree of interdependence and cooperation through their use of programs to evaluate and modify their clinical practice patterns, in order to control costs and assure the quality of pharmacy services provided through the arrangement. As with risk-sharing arrangements, the arrangement must be non-exclusive. Because the definition of a clinically integrated arrangement is by necessity less precise than that of a risk sharing arrangement, the order imposes prior notification requirements. Such prior notification will allow the Commission to evaluate the likely competitive impact of a specific proposed arrangement and thereby help guard against the recurrence of acts and practices that have restrained competition and consumer choice.

The proposed order would permit respondent Alvarez to negotiate with any payer or provider on behalf of pharmacies that he owns. The proposed order would also permit Alvarez to negotiate on behalf of pharmacies that he operates pursuant to a contract, provided that he submits written notice and a copy of the contract to the Commission within ten (10) days of entering into such contract and refrains from negotiations with any payer or provider for at least thirty (30) days after providing such notice.

Part III of the proposed order would require the AFRA distribute copies of the order and accompanying complaint, as well as certified Spanish translations, to each person who, at any time since November 22, 1994, has been an officer, director, manager, employee, or participating pharmacy in AFRA, and to each payer or provider, who at any time since November 22, 1994, has communicated any desire, willingness, or interest in contracting for pharmacy goods and services with AFRA members.

Parts IV and V of the order impose certain reporting requirements in order to assist the Commission in monitoring compliance with the order.

The proposed consent order would terminate 20 years after the date it is issued.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 98-33707 Filed 12-18-98; 8:45 am]
BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[File No. 9410047]

Columbia River Pilots; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Action proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 19, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: K. Shane Woods or Charles A. Harwood, Seattle Regional Office, Federal Trade Commission, 915 Second Ave., Suite 2896, Seattle, Washington 98174, (206) 220-6363.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice

is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 14, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted a proposed consent order from Columbia River Pilots ("COLRIP"). COLRIP is an association of approximately forty marine pilots licensed by the State of Oregon to provide navigational assistance to vessels on the Columbia River. COLRIP facilitates the provision of marine pilotage by its members by, among other things, dispatching marine pilots to incoming and outgoing vessels and collecting and distributing marine pilots' fees.

In 1989, two pilots resigned from COLRIP to form a competing pilotage group, Lewis & Clark Pilotage, Inc. ("L&C"). For the first time in forty years, there was competition for pilotage services on the Columbia River. The benefits from this competition were immediate and significant. L&C made several improvements in its service that reduced costs to shippers.

The profitability of shippers depends on the speed and volume of shipments. Ships cost tens of thousands of dollars a day to operate. Shippers' costs are lower the less time ships are on the river and the more product they ship. Marine pilots play an important role in this effort, because they influence the time a vessel is on the river and how much cargo is transported. L&C quickly improved efficiency on the Columbia River by expanding the hours pilots moved vessels, by working with shippers to get a maximum load for the

time of sailing, and by being available to move vessels twenty-four hours a day, without significant advance notice. The results were dramatic. For example, at Peavey Grain Company, a ConAgra-owned grain elevator that is among the largest on the West Coast, L&C's practices improved the rate at which Peavey funneled grain through its elevators by more than 10%, resulting in significant cost reductions for Peavey.

L&C's innovations reverberated through the market. COLRIP improved its services in response to L&C by, e.g., dispatching pilots more quickly and moving longer and deeper vessels under a broader range of conditions with fewer tugs. Before L&C's entry, COLRIP offered none of the service innovations that L&C provided Peavey. After L&C's formation, the Oregon legislature modified Oregon's pilotage statute to protect competition from regulatory interference in marine pilotage.

Unfortunately, the benefits of competition were short lived. COLRIP took actions to eliminate L&C and any future competitors. Soon after L&C's formation, COLRIP adopted a series of penalties for its remaining members so severe that no other COLRIP pilot was likely to leave COLRIP to join L&C or to form a new company. Any COLRIP pilot who left to compete with COLRIP would forfeit \$200,000, appreciation in stock in a corporation owned by COLRIP members, pension benefits, and six months' work on the Columbia. This last penalty would not only cost the marine pilot approximately \$70,000 in lost revenues, but would also provide grounds under Oregon law for requiring that the pilot either be retrained or have his license revoked. Because COLRIP was responsible for pilot training, this penalty could have effectively ended a pilot's career on the Columbia River.

In 1991, L&C sued COLRIP, alleging that COLRIP instigated a series of acts to eliminate competition and preserve its monopoly, including threatening shipping agents with labor disruptions should they hire L&C for work outside Peavey. See *Lewis & Clark Pilotage Inc. v. Columbia River Pilots*, No. CV91-25 (D. Ore. filed January 8, 1991). COLRIP and L&C settled this litigation on terms that allowed L&C to survive, but restricted competition. COLRIP agreed to let L&C serve shippers berthed at Peavey, but L&C could not provide pilotage to any other vessels. L&C could bid on business at new docks, but it could not expand by more than a single pilot, which limited its ability to serve new business.

In addition, as part of the litigation settlement, COLRIP required L&C not to enter exclusive dealing contracts. L&C's

exclusive dealing contract with Peavey had fostered L&C's entry. It is likely that an upstart firm such as L&C could be successful only if it could enter exclusive deals.

Finally, the settlement prohibited L&C from proposing or supporting a rate structure that did not have the essential features of the current rate structure. This provision substantially reduced competition in the rate-setting process. Rates are set by the Board after soliciting proposals from shippers and pilot groups.

The settlement permitted L&C to continue to compete, although at a diminished level. The penalties imposed by COLRIP on pilots leaving to compete with COLRIP were devastating to competition. Because L&C could not recruit new pilots, L&C was forced to exit the market when its founding members retired.

The complaint charges that COLRIP's penalties on pilots leaving to compete and its settlement with L&C violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. COLRIP's penalties on pilots leaving to compete with COLRIP protected COLRIP from additional competition. Not one pilot left to compete with COLRIP, either by joining L&C or by forming another pilotable group, after COLRIP adopted these penalties. Indeed, no pilot has left COLRIP since L&C's founders retired and COLRIP regained its monopoly. L&C's pilotage business was very profitable and, absent COLRIP's draconian penalties, should have attracted competition. In addition, COLRIP's settlement with L&C all but eliminated the ability of L&C to compete with COLRIP before L&C exited the market. The settlement substantially limited L&C's ability to offer pilotage to customers other than Peavey Grain Company and reduced L&C's ability to influence rates before the Oregon Board of Maritime Pilots. The settlement provisions and the penalties on departing pilots were not justified on efficiency grounds.

The proposed consent order would prohibit COLRIP from penalizing marine pilots who leave to compete with COLRIP, except where a pilot either has been a member of COLRIP for less than five years or fails to give COLRIP ninety days' notice of his intention to leave. COLRIP is also required to notify its members and the local shippers' association of this prohibition.

COLRIP's ability to penalize pilots who leave before serving five years appears unlikely to prevent competition in pilotage, since it affects only 25% of

COLRIP's members. Approximately 75% of COLRIP's marine pilots would immediately be free to leave COLRIP without a penalty. Moreover, it appears reasonable for COLRIP to demand that pilots remain for some period after COLRIP has trained them. Similarly, the notice requirement appears too brief to reduce significantly a pilot's incentive to leave and would afford COLRIP the opportunity to attend to internal issues raised by a departure, such as pilot scheduling changes and any contractual pay-outs required by a departure.

Should competition emerge, the proposed consent order also would protect that competition by prohibiting COLRIP from entering into agreements similar to the ones with L&C. That is, COLRIP cannot agree with a competitor to allocate customers, limit a competitor's size, or restrict the competitor's ability to enter exclusive agreements with customers or to submit rate proposals or otherwise communicate with the Oregon Board of Maritime Pilots. Finally, COLRIP cannot prevent a COLRIP marine pilot from recommending or otherwise supporting an applicant for a pilot's license or for training to obtain one. This restriction on COLRIP should encourage more applicants and expand the number of available pilots.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to assist public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement containing the proposed consent order or to modify in any way its terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98-33706 Filed 12-18-98; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Solicitation for a Third Party Logistics Provider To Perform Freight Shipment Management Services

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of Extension to comment period.

SUMMARY: GSA published for comment in the **Federal Register** on August 7, 1998, a notice advising industry of a solicitation for Third Party Logistics Services for a freight shipment test pilot project (63 FR 42402). The solicitation was revised to address issues raised by industry as well as to incorporate ideas generated by GSA's research and discussions. GSA issued the revised draft solicitation on October 22, 1998, and announced it in the *Commerce Business Daily* but not in the **Federal Register**. At a November 16, 1998, industry briefing on the revised draft solicitation GSA officials requested industry comments by December 4, 1998. This notice advises that GSA is extending the comment period, announced in the November 16, 1998 industry briefing as set forth below in the **DATES** paragraph.

DATES: Please submit your comments by Friday, January 8, 1999.

ADDRESSES: Mail comments to Ms. Patricia G. Walker, Contracting Officer, Contract Management Division (4FQ-P), GSA, FSS, 401 W. Peachtree Street, NW, Suite 2600, Atlanta, GA 30365-2550, Attn: 3PL Solicitation.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia G. Walker, Contracting Officer, in writing at Contract Management Division, (4FQ-P), GSA, FSS, 401 W. Peachtree Street, NW, Suite 2600, Atlanta, GA 30365-2550, Attn: 3PL Solicitation; by phone at 404-331-3059; or by e-mail at patriciag.walker@gsa.gov.

SUPPLEMENTARY INFORMATION: In the draft solicitation, GSA proposed to change a variety of procedures now used under its transportation program. Proposed new procedures to be performed by the contractor include:

- (a) Using commercial forms and/or electronic commerce for shipment processing and invoicing;
- (b) Pre-screening carriers for participation in GSA's freight program;
- (c) Selecting carriers based on the greatest value advantage to the Government;
- (d) Attaining cost efficiencies through use of multiple procurement strategies;
- (e) Managing freight shipments from receipt of shipment data through delivery;
- (f) Tracking/tracing shipments and providing access to tracking/tracing information via the Internet so GSA customers can monitor shipment status;
- (g) Managing loss and damage claims from receipt of loss/damage reports to filing, tracking, monitoring, and settling claims; and

(h) Paying carriers for provided transportation services through use of a Government charge card.

Dated: December 14, 1998.

Allan J. Zaic,

Assistant Commissioner, Office of Transportation and Property Management.

[FR Doc. 98-33687 Filed 12-18-98; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E-0478]

Determination of Regulatory Review Period for Purposes of Patent Extension; Requip

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Requip and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes

effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Requip (ropinirole). Requip is indicated for the treatment of the signs and symptoms of idiopathic Parkinson's disease. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Requip (U.S. Patent No. 4,452,808) from SmithKline Beecham Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 9, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Requip represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Requip is 3,356 days. Of this time, 2,729 days occurred during the testing phase of the regulatory review period, while 627 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* July 14, 1988. The applicant claims July 10, 1988, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 14, 1988, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* January 2, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for Requip (NDA 20-658) was initially submitted on January 2, 1996.

3. *The date the application was approved:* September 19, 1997. FDA has verified the applicant's claim that NDA 20-658 was approved on September 19, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 19, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 21, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 4, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98-33639 Filed 12-18-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E-0788]

Determination of Regulatory Review Period for Purposes of Patent Extension; Sucralose

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined

the regulatory review period for Sucralose and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that food additive.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For food additives, the testing phase begins when a major health or environmental effects test involving the food additive begins and runs until the approval phase begins. The approval phase starts with the initial submission of a petition requesting the issuance of a regulation for use of the food additive and continues until FDA grants permission to market the food additive product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a food additive will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(2)(B).

FDA recently approved for marketing the food additive Sucralose (sucralose). Sucralose is used as a nonnutritive sweetener in food where standards of identity do not preclude such use. Subsequent to this approval, the Patent

and Trademark Office received a patent term restoration application for Sucralose (U.S. Patent No. 4,435,440) from Tate & Lyle PLC, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 7, 1998, FDA advised the Patent and Trademark Office that this food additive had undergone a regulatory review period and that the approval of Sucralose represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Sucralose is 5,332 days. Of this time, 1,260 days occurred during the testing phase of the regulatory review period, while 4,072 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a major health or environmental effects test ("test") involving this food additive additive product was begun:* August 30, 1983. FDA has verified the applicant's claim that the test was begun on August 30, 1983.
2. *The date the petition requesting the issuance of a regulation for use of the additive ("petition") was initially submitted with respect to the food additive additive product under section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348):* February 9, 1987. FDA has verified the applicant's claim that the petition was initially submitted on February 9, 1987.
3. *The date the petition became effective:* April 3, 1998. FDA has verified the applicant's claim that the regulation for the additive became effective on April 3, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 19, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 21, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review

period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 4, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98-33638 Filed 12-18-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for permits 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.*).

Permit Numbers TE006010 and TE006012

Applicant: Dr. Steven J. Taylor, Center for Biodiversity, Illinois Natural History Survey, Champaign, Illinois.

The applicant requests two permits to take (collect) endangered Illinois Cave Amphipod (*Gammarus acherondytes*) in Monroe and St. Clair Counties, Illinois. Research is proposed for scientific purposes to determine environmental threats to extant amphipod populations and to determine components of distribution of the species. Activities are proposed for the purpose of survival and enhancement of the species in the wild.

Permit Number TE006007

Applicant: Dr. Julian Lewis, Clarksville, Indiana.

The applicant requests a permit to take (collect) endangered Illinois Cave Amphipod (*Gammarus acherondytes*) in Monroe and St. Clair Counties, Illinois,

in conjunction with a survey of cave fauna. Survey data will contribute to knowledge of the distribution and abundance of the species in the wild. Activities are proposed for the survival and enhancement of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review 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, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056. Telephone: (612) 713-5343; FAX: (612) 713-5292.

Dated: December 14, 1998.

Lynn M. Lewis,

*Acting Program Assistant Regional Director,
Ecological Services, Region 3, Fort Snelling,
Minnesota.*

[FR Doc. 98-33681 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for the Alameda National Wildlife Refuge and Notice of Public Meeting to Seek Comments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability and Notice of Public Meeting.

SUMMARY: This notice advises agencies and the public that the draft Comprehensive Conservation Plan (Plan) and Environmental Assessment (Assessment) for the proposed Alameda National Wildlife Refuge are available for public review and comment. This notice also advises that an open house meeting will be held to solicit public comments on the draft Plan and Assessment.

The purpose of the Comprehensive Management Plan is to guide Refuge management decisions and to identify strategies to meet the goals and objectives of the Alameda Refuge and National Wildlife Refuge System. The Comprehensive Conservation Plan addresses resources protection,

management, and restoration; research and monitoring; education and interpretation; public involvement, use, and access; facilities development; and compatibility of uses with the purpose of the refuge.

The Environmental Assessment evaluates the alternatives and analyzes the environmental effects of establishing the Alameda Refuge and of implementing the Comprehensive Conservation Plan. The four alternatives evaluated in the Environmental Assessment provide different levels of wildlife management and public use opportunities. The Environmental Assessment will be used to determine whether the implementation of the selected alternative would have a significant impact upon the quality of the human environment.

DATES: The agency must receive written comments on the Plan and Assessment on or before February 16, 1999. The agency will hold an open house meeting on January 14, 1999, 6:30 p.m. to 9:00 p.m. in Alameda, California.

ADDRESSES: Address written comments to Charles Houghten, Division of Refuge Planning (ARW-RPL), U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232-4181. The public open house will be held at the Alameda High School Cafeteria, 2200 Central Avenue between Walnut and Oak Streets in Alameda, California.

See the Supplementary Information Section for the electronic access and filing address.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals who want copies of the draft Comprehensive Conservation Plan for the Alameda National Wildlife Refuge and associated Environmental Assessment should immediately contact the Division of Refuge Planning at the above referenced address or call 800-662-8933. These documents are also available at www.r1.fws.gov/planning/plnhome.html.

Background Information

The draft Comprehensive Management Plan presents an overview of the Service's proposed management approaches to wildlife and habitats, public uses and wildlife-dependent recreation activities, and facilities. This plan corresponds to Alternative C, the preferred alternative, in the draft Environmental Assessment. The proposed management actions only apply to lands and waters within the National Wildlife Refuge System.

The proposed Refuge would be managed for the conservation and

management of native species of wildlife and fish and their habitats. Wildlife species identified as endangered or threatened will receive management priority, with a special emphasis on stewardship of the California least tern nesting colony. Management actions, including expanding the colony, would be taken to assure that the Alameda least tern colony continues to be one of the most successful breeding sites in California. Habitat management will emphasize keeping most of the currently unvegetated areas free of vegetation to deter predators, removing exotic species of plants, and restoring wetland habitat. Predators of least terns will be managed by an integrated program of preventative and selective humane control methods.

Four alternatives for management of wildlife and habitat are analyzed in the draft Environmental Assessment. All alternatives except the no-action alternative would establish a national wildlife refuge of the same size but would differ in the type of management. Alternative A—No Action, Alternative B—Establish a national wildlife refuge with a minimum level of management, Alternative C—Establish a national wildlife refuge and optimize Wildlife Management and Wildlife-Dependent Public Uses (Preferred Alternative), and Alternative D—Establish a national wildlife refuge and maximize public use with moderate wildlife management.

The environmental review of the Comprehensive Conservation Plan and associated Environmental Assessment will be conducted in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA regulations (40 CFR 1500-1508), National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Electronic Access and Filing Address

You may submit comments by sending electronic mail (e-mail) to r1planning_guest@fws.gov (with "Alameda NWR" typed in the subject line). If comments are an attached file, submit as an ASCII file, avoiding the use of special characters and any form of encryption.

Dated: December 14, 1998.

Michael J. Spear,

*Manager, California/Nevada Operations,
Sacramento, California.*

[FR Doc. 98-33698 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Information Collection Submitted to the Office of Management and Budget for Review under the Paperwork Reduction Act**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reinstatement.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) has submitted the proposed information collection request for the Application for Assistance/Services under the Financial Assistance and Social Services Program, OMB NO. 1076-0017 for reinstatement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On June 5, 1998, the BIA published a Notice in the **Federal Register** (Volume 63, No. 108, page 30771) requesting comments on the proposed information collection. One public comment was received during the 60 day comment period. The respondent recommended that the application form be divided into two separate forms, enlarging the print, and that Self-Governance Tribes be provided flexibility to develop their own forms. In response to the suggestions, the BIA stated that prior to 1992, there were two separate application forms. Based on the recommendations of a majority of tribes for brevity and ease of application, the forms were combined. The print is small because of the volume of information requested, but has been determined readable by users and caseworkers alike. Therefore, one comment was not sufficient to change the format. In response to the recommendation that the Self-Governance Tribes not be required to use the form, the BIA agrees that there is no statutory requirement for the Self-Governance Tribes to use the form. However, if the Tribes choose a different form, it should collect comparable data so that the information can be used for reporting and budget preparation purposes.

FOR FURTHER INFORMATION CONTACT:

Copies of the collection of information may be obtained by contacting Larry Blair, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street NW, MS-4603-MIB, Washington, D.C. 20240. Telephone: (202) 208-2479.

DATES: OMB is required to respond to this request within 60 days after publication of this notice in the **Federal Register**, but may respond after 30 days; therefore, your comments should be

submitted to OMB by January 20, 1999 (to assure maximum consideration).

ADDRESSES: Your comments and suggestions on the requirements should be made directly to the attention of: Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW, Washington, D.C. 20503. Telephone: (202) 208-3667. Please provide a copy to Mr. Larry Blair, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street NW, MS-4603-MIB, Washington, D.C. 20240. Telephone: (202) 208-2479.

SUPPLEMENTARY INFORMATION:**I. Abstract**

The information collection is in compliance with 25 CFR Part 20, for the purpose of applying for annual welfare assistance funds which includes general assistance, child welfare assistance, and miscellaneous assistance to determine eligibility for services and funding. In addition, the BIA uses this data to measure program performance and for gathering data to prepare the annual program budget justification.

II. Request for Comments

We specifically request your comments be submitted to OMB at the address provided above with a copy to the BIA within 30 days concerning the following:

1. Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;
2. The accuracy of the BIA's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and,
4. How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

III. Data

Title of the Collection of Information: Department of the Interior, Bureau of Indian Affairs, Application for Financial Assistance and Social Services Program.

OMB Number: 1076-0017.

Affected Entities: Members of Indian tribes and their members who are living on a reservation or near-reservation.

Frequency of Response: Annual.

Estimated Number of Annual Responses: 200,000 applicants.

Estimated Time per Application: 15 minutes.

Estimated Total Annual Burden Hours: 50,000 hours.

Dated: December 7, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98-33666 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Distribution of Fiscal Year 1999 Welfare Assistance Funds**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of method of distribution of Fiscal Year (FY) 1999 Welfare Assistance Funds within Part 20—Financial Assistance and Social Services Program.

SUMMARY: The purpose of this announcement is to issue the Bureau of Indian Affairs (Bureau) administrative procedures for distribution of Welfare Assistance Funds (funds utilized within 25 CFR 20). These administrative procedures are designed to provide Bureau personnel and tribal contractors/compactors with assistance in carrying out their responsibilities when distributing welfare assistance funds. These procedures are not regulations establishing program requirements.

DATES: The Mid-Year Analysis of Funds Reports are due on April 30, 1999. For Bureau and tribal programs on fiscal year systems, this report will include actual expenditures and caseload for 6 months and projections for the remaining 6 months. Those tribal programs on calendar year systems will include actual expenditures and caseload for 3 months and projections for the remaining 9 months. Area offices will notify Bureau Agencies and tribes of due dates and locations for transmission of these reports. In addition, the Office of Self-Governance will notify tribes of due dates and locations for transmission of these reports.

ADDRESSES: Department of the Interior, Bureau of Indian Affairs, Office of Self-Governance, 1849 C Street, NW, MS-2548-MIB, Washington, D.C. 20240. Telephone: (202) 219-0240. Department of the Interior, Bureau of Indian Affairs, Office of Tribal Services, Division of Social Services, 1849 C Street, NW, MS-4603-MIB, Washington, D.C. 20240. Telephone: (202) 208-2479.

SUPPLEMENTARY INFORMATION: A total of \$94,010,000 is available to meet welfare

assistance requirements (general assistance, TWEP, child welfare assistance, and miscellaneous assistance) during FY 1999.

Method of Distribution

There will be two distributions of welfare assistance funds in FY 1999. The first distribution will be an amount equal to 75 percent of projected expenditures for FY 1998 minus prior year unliquidated balances. The second and final distribution of welfare assistance will be made on or about June 1, 1999. This distribution will be based upon submission and analysis of the Mid-Year Analysis of Funds Report for all Bureau operated programs and tribal contractors/compactors. If the nationwide Mid-Year Analysis of Funds Report indicates that the undistributed balance will not be sufficient to cover the entire need for welfare assistance, this amount will be distributed pro rata, so that all programs (Bureau, contractors and compactors), will receive the same percentage level of funds.

Area offices are responsible for collecting data and providing technical assistance to all non-compact tribes (Pub. L. 93-638 contract and Pub. L. 102-477 grant) and agencies on completion of the Mid-Year Analysis of Funds Report. Self-Governance tribes will submit their reports through the Office of Self-Governance in Washington, D.C. The area offices will collect these reports from all Bureau offices and tribes operating programs within their jurisdiction with the exception of the Self-Governance tribes. The area offices will consolidate the data including the expenditures and cases into one report for the entire area. Those locations which do not submit reports will not receive any additional funds. The area offices and the Office of Self-Governance will submit their consolidated reports with all individual tribe and agency reports to the Office of Tribal Services by May 15, 1999. Area offices and the Office of Self-Governance should also provide a short narrative explaining significant changes in caseload and expenditures or other circumstances affecting program operation. An example would be action by a State resulting in termination of Indian clients formerly served by the State Temporary Assistance For Needy Families program.

Dated: December 11, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98-33665 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-070-09-7122-00-56-36, SRP-99-01]

Closure of Public Lands; Arizona

AGENCY: Bureau of Land Management, DOI.

ACTION: Temporary Closure of Selected Public Lands in La Paz County, Arizona, during the operation of the 1999 Whiplash Parker 400K (kilometer) Desert Race.

SUMMARY: The Lake Havasu Field Office Manager announces the temporary closure of selected public lands under its administration in La Paz County, Arizona. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official permitted running of the 1999 Whiplash Parker 400K Desert Race.

DATES: January 8, 1999, through January 10, 1999.

SUPPLEMENTARY INFORMATION: Specific restrictions and closure periods are as follows:

Designated Course

1. The portion of the race course comprised of BLM lands, roads and ways located 2 miles either side of:

(a) Shea Road from the eastern boundary of the Colorado River Indian Tribes Reservation to the junction with Swansea Road and 2 miles either side of Swansea Road from its junction with Shea Road to the eastern bank of the Central Arizona Project Canal.

(b) Swansea Road from its junction with Shea Road to the Four Corners intersection.

(c) The unpaved road that runs from "Midway", north to Mineral Wash and then west to the CAP Canal is closed to public use from 6:00 a.m. Friday morning, January 8, 1999, to 6:00 p.m. Sunday, January 10, 1999.

2. The entire designated race course is closed to all vehicles except authorized and emergency vehicles.

3. Vehicle parking or stopping in areas affected by the closure is prohibited except in the designated spectator areas. Emergency parking for brief periods of time is permitted on roads open for public use.

4. Spectator viewing (on public land) is limited to the designated spectator areas located South and North of Shea Road, as signed, app. 7 miles east of Parker, Arizona.

5. The following regulations will be in effect for the duration of the closure: Unless otherwise authorized, no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course, including all portions of Osborne Wash.

c. Spectate or otherwise be located outside of the designated spectator areas.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Firearms must be unloaded and cased, and are not to be used during the closure.

f. Fireworks are prohibited.

g. Operate any vehicle (other than registered event vehicles), including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit areas.

j. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at the owner's expense.

k. Take any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier.

l. Fail to keep their site free of trash and litter during the period of occupancy or fail to remove all personal equipment, trash, and litter upon departure.

m. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10 p.m. and 6 a.m. Mountain Standard Time.

n. Allow any pet or other animal in their care to be unrestrained at any time. Signs and maps directing the public to the designated spectator areas will be provided by the Bureau of Land Management and/or the event sponsor. The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona or to La Paz County. Vehicles under permit for operation by event participants must follow the race permit stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all La Paz County and BLM roads and ways. Authority for closure of public land is found in 43 CFR 8340, Subpart 8341; 43 CFR 8360, Subpart 8364.1, and 43 CFR 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than

\$100,000 and/or imprisoned for not more than 12 months.

FOR FURTHER INFORMATION CONTACT:

Bryan Pittman, District Law Enforcement Ranger, or Myron McCoy, Outdoor Recreation Planner, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (520) 505-1200.

Dated: December 9, 1998.

Robert M. Henderson,

(Acting) Field Manager.

[FR Doc. 98-33682 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-610-1020-00]

Extension of the Environmental Assessment Comment Period for the Proposed Amendment of the California Desert Conservation Area Plan, 1980

SUMMARY: The Bureau of Land Management announces an extension of the comment period until January 25, 1999. The extension is in response to public requests for additional time to submit comments on the proposed plan amendment.

FOR FURTHER INFORMATION CONTACT:

Larry Morgan, Rangeland Management Specialist, U.S.D.I., Bureau of Land Management, California Desert District Office, 6221 Box Springs Blvd., Riverside, California 92507-0714 tel.: (909) 697-5388.

Dated: December 16, 1998.

Alan Stein,

Acting District Manager.

[FR Doc. 98-33796 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-1610-00]

Notice of Intent To Prepare an Environmental Impact Statement on the Fallon Range Training Complex Requirements Document for the U.S. Navy Fallon Range Training Complex, Fallon, Nevada

AGENCY: Bureau of Land Management, Carson City Field Office U.S. Naval Air Station Fallon, Nevada.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) on the U.S. Navy Fallon Range Training Complex Requirements Document; and

notice of scoping period and public meetings.

SUMMARY: The Bureau of Land Management (BLM), Carson City Field Office and the U.S. Navy Fallon Range Training Complex (Navy) will jointly direct the preparation of an EIS to be produced by a third-party contractor on the impacts (direct, indirect, and cumulative) from required Navy training on public and Navy-owned lands in central Nevada. The BLM and the Navy invite comments on the scope of the analysis.

EFFECTIVE DATES: Four public scoping meetings will be held in January, 1999 to allow the public an opportunity to identify issues and concerns to be addressed in the EIS. Representatives of the BLM and the Navy will be available to answer questions about the Fallon Range Training Complex Requirements Document and the EIS process. Comments will be accepted until February 5, 1999.

The scheduled public meetings are: Eureka, NV (7:00-9:00 p.m.)—January 20, 1999, Eureka Opera House Austin, NV (7:00-9:00 p.m.)—January 21, 1999, Austin High School Fallon, NV (7:00-9:00 p.m.)—January 27, 1999, Fallon Convention Center, 100 Campus Way, Fallon, NV Reno, NV (7:00-9:00 p.m.)—January 28, 1999, BLM Nevada State Office, 1340 Financial Blvd., Reno, NV

A Draft EIS (DEIS) is expected to be completed by April, 1999 and made available for public review and comment. At that time a Notice of Availability (NOA) of the DEIS will be published in the **Federal Register**. The comment period on the DEIS will be 60 days from the date the NOA is published.

FOR FURTHER INFORMATION CONTACT:

Scoping comments may be sent to: Field Manager, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701. ATTN: Navy EIS Project Manager.

For additional information, write to the above address or call Terri Knutson (BLM) at (702) 885-6156 or Sam Dennis (Navy) at (650) 244-3007.

SUPPLEMENTARY INFORMATION: The Navy has submitted the Fallon Range Training Complex Requirements Document for the update, consolidation, and analysis of all Navy training requirements on public and Navy-owned lands in central Nevada. The Navy requirements document includes: Electronic Warfare, Airspace, Target Complex (Bravo-17, Bravo-19, Bravo-20), Tracking/Communications, and Land Training.

The EIS will address issues brought forth through scoping comments and

will be evaluated by an interdisciplinary team of specialists. A range of alternatives and mitigating measures will be considered to evaluate and minimize environmental impacts and to assure that the proposed action does not result in undue or unnecessary degradation of public lands.

Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the BLM/Navy decision on the Fallon Range Training Complex Requirements Document are invited to participate in the scoping process with respect to this environmental analysis. These entities and individuals are also invited to submit comments on the DEIS.

It is important that those interested in the Navy activities participate in the scoping and commenting processes. To be most helpful, comments should be as specific as possible.

The project schedule is as follows:

Begin Public Comment Period—

December, 1999

Issue Draft EIS—April, 1999

Issue Final EIS—July, 1999

Issue Record of Decision—September, 1999

End 30-day Appeal Period/
Implementation—October, 1999

The BLM/Navy's scoping process for the EIS will include: (1) Identification of issues to be addressed; (2) Identification of viable alternatives; (3) Notification of interested groups, individuals, and agencies so that additional information concerning these issues, or other issues, can be obtained.

Dated: December 10, 1998.

Karl Kipping,

Associate Manager, Carson City Field Office.

[FR Doc. 98-33657 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(AK-020-09-1220-00-241A)

Designation of Off-Road Vehicle Use Areas in the White Mountains National Recreation Area

This notice of designated Off-Road Vehicle (ORV) use areas applies to all lands and water surfaces within the White Mountains National Recreation Area and BLM-managed lands between the White Mountains NRA and the Steese and Elliott Highways, as shown on the White Mountains National Recreation Area Off-Road Vehicle Designations Map, and is subject to valid existing rights.

This order is issued pursuant to 43 CFR subpart 8342 and in accordance

with the authority and requirements of Executive Order 11644 and 11989, and implements provisions of the White Mountains NRA Resource Management Plan signed on February 2, 1986 and the White Mountains NRA Gateway Project Record of Decision signed on March 9, 1990. It modifies previous orders on July 15, 1988 and May 1, 1992. This order will become effective December 1, 1998 and remain in effect until rescinded or modified by the Field Manager.

Definitions

The term "winter use" refers to the period of time between October 15 and April 30, inclusive. The term "summer use" refers to the remaining period of time between May 1 and October 14. The terms "gross vehicle weight" and "GVW" refer to the loaded weight of the vehicle, including gear, passengers, and fuel. The terms "gross vehicle weight rating" and "GVWR" mean the value specified by the manufacturer as the loaded weight of a single vehicle.

A. Limited ORV Use Designations

1. The foothills area, as shown on the White Mountains National Recreation Area Off-Road Vehicle Designations Map, and subject to valid existing rights, is closed to use of ORVs that weigh more than 1,500 pounds GVW or have a GVWR greater than 1,500 pounds without written authorization from the Field Manager. Written authorization is not required by this notice for use of vehicles that weigh over 1,500 pounds GVW or have a GVWR greater than 1,500 pounds on the U.S. Creek Road, Nome Creek Road and the mining tailings along Nome Creek.

2. The highlands area, as shown on the White Mountains National Recreation Area Off-Road Vehicle Designations Map, is managed to protect the wild and natural character of the area. Subject to valid existing rights, this area is closed to all summer use of ORVs and to winter use by snowmachines that weigh more than 1,500 pounds GVW or have a GVWR greater than 1,500 pounds. All ORV use is prohibited in the Windy Creek and Fossil Creek drainages from April 15 to August 31, inclusive, in order to avoid disturbance to known peregrine falcon nesting areas. All other ORV use is prohibited without written authorization from the Field Manager.

3. Beaver Creek has been designated, and is managed as, a "wild" river pursuant to the Wild and Scenic Rivers Act (WSRA, PL 90-542). Except for the closures noted above for the Windy Creek and Fossil Creek drainages, and subject to valid existing rights, the

Beaver Creek National Wild River corridor is closed to all summer use of ORVs and to winter use of snowmachines that weigh more than 1,500 pounds GVW or have a GVWR greater than 1,500 pounds. Any other ORV use is prohibited without written authorization from the Field Manager.

4. The Ski Loop Trail (specifically, the land within 12.5 feet of the centerline of the trail) is managed as a non-motorized recreation trail and is closed to all motorized vehicle use.

5. The Summit Trail (specifically, the land within 12.5 feet of the centerline of the trail) is managed as a non-motorized recreation trail and is closed to all motorized vehicle use, except that the trail is open to winter use by snowmachines, weighing less than 1,500 pounds GVW or have a GVWR less than 1,500 pounds, to the extent necessary to allow these snowmachines to cross the trail at right angles, more or less, incidental to accessing State or Federal lands otherwise open to such use.

B. Closed to ORV Use Designation

1. There are three designated Research Natural Areas (RNAs) shown on the White Mountains National Recreation Area Off-Road Vehicle Designations Map (Serpentine Slide, Limestone Jags, and Mount Prindle), which are closed year-round to all ORV use. These have been identified as having representative examples of ecosystems or unusual natural features that are of scientific interest for the Ecological Reserve System.

The foregoing provisions are not applicable to any federal, state, or local law enforcement officer, or any member of any organized rescue or fire suppression force in the performance of an official duty.

Signs will be placed at major access points showing ORV use restrictions. Maps identifying these designated use areas are available at the office listed below. Operators of ORVs in violation of these designations are subject to the penalties prescribed in 43 CFR subpart 8340.0-7.

Direct questions and responses to: Bureau of Land Management, Northern Field Office, White Mountains Team, 1150 University Avenue, Fairbanks, Alaska 99709-3899, (907) 474-2200.

Dated: December 1, 1998.

Lon Kelly,

Associate Field Manager, Northern Field Office.

[FR Doc. 98-33511 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-910-0777-61-241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting and tour.

SUMMARY: This notice announces a meeting and tour of the Arizona Resource Advisory Council. The meeting and tour will be held January 28-29, 1999 in Yuma, Arizona. On January 28, the RAC will conduct a one-day meeting from 8:30 a.m. until approximately 3:00 p.m. The meeting will be held at the BLM Yuma Field Office located at 2555 East Gila Ridge Road in Yuma, Arizona. The agenda items to be covered at the meeting include review of previous meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Road Maintenance on Grazing Allotments and Recreation Fee Demonstration Updates; Discussion of Noxious Weed Issue and Proposed Resolution; Discussion with Yuma County Sheriff's Department on Cooperative Relations; Prioritization of Grazing Allotments regarding implementation of Standards and Guidelines, Proposed Field Office Rangeland Resource Teams; and Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from BLM Field Office Managers; Reports from RAC members; and Discussion on future meetings. A public comment period will be provided at 11:30 a.m. on January 28, 1999, for any interested publics who wish to address the Council. On January 29, the field tour will highlight dispersed and intensive recreation sites and discuss the Recreation Fee Demonstration Program in the Yuma and Quartzsite areas. The tour will depart from the Inn Suites, 1450 Castle Dome Avenue, Yuma, Ariz., at 8:00 a.m., and conclude approximately at 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004-2203, (602) 417-9215.

Kim Harb,

Acting Arizona Associate State Director.

[FR Doc. 98-33696 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-32-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[NV-040-1020-001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council Meeting Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council (RAC) will be held as indicated below. The agenda includes a public comment period, and discussion of public land issues.

The Resource Advisory Council develops recommendations for BLM regarding the preparation, amendment, and implementation of land use plans for the public lands and resources within the jurisdiction of the council. For the Mojave-Great Basin RAC this jurisdiction is Clark, Esmeralda, Lincoln and Nye counties in Nevada. Except for the purposes of long-range planning and the establishment of resource management priorities, the RAC shall not provide advice on the allocation and expenditure of Federal funds, or on personnel issues.

The RAC may develop recommendation for implementation of ecosystem management concepts, principles and programs, and assist the BLM to establish landscape goals and objectives.

All meetings are open to the public. The public may present written comments to the council. Public comments should be limited to issues for which the RAC may make recommendations within its area of jurisdiction. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Michael Dwyer at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647-5000.

DATES: Dates are January 28 and 29, 1999, March 18 and 19, 1999, and May 20 and 21, 1999. Meeting times are from

8 a.m. to 4 p.m. Public Comment period is at 2 p.m.

ADDRESSES: The council will meet at the Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Phillip L. Guerrero, Public Affairs Officer, 4765 West Vegas Drive, Las Vegas, NV 89108, (702) 647-5046.

Dated: December 8, 1998.

Phillip L. Guerrero,
Public Affairs Officer.

[FR Doc. 98-33753 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[NV-930-1430-01; N-60834 and N-59594]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, DOI.

ACTION: Non-Competitive Sale of Public Lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada have been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) and Pub. L. 101-67, the Apex Project, Nevada Land Transfer and Authorization Act of 1989.

Notice is hereby given that on December 9, 1998, J. Robert Dunn, Acting Manager, Las Vegas Field Office, Bureau of Land Management, issued Decisions to approve two proposed land sales to Clark County, a political subdivision of the State of Nevada, within the following described lands.

Mount Diablo Meridian, Nevada

T. 17 S., R. 63 E.,

Sections 32 and 33

T. 18 S., R. 63 E.,

Sections 3-5, 8-11, 13, 14, 20-24, 26-35

T. 19 S., R. 63 E.,

Sections 2-9.

Containing 11,358 acres, more or less.

Designated utility corridors within the above described lands will be retained in federal ownership to be managed by the Bureau of Land Management. A map and complete legal description can be obtained—may be obtained—by writing the Las Vegas Field Office at the above address or calling Cheryl Ruffridge, Realty Specialist, (702) 647-5064.

In the event of a sale, conveyance of the available mineral interests will

occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a \$50.00 nonreturnable filing fee for conveyance of the available mineral interests. The parcel of land, situated in Clark County is being offered as a non-competitive sale to Clark County as part of the Apex Heavy Industrial Use Park Master Plan. This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

The patents, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals.

and will be subject to easements for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County.

1. All valid and existing rights.

Approximately 21,000 acres of federal land in Clark County were designated suitable for disposal by non-competitive sale by Pub. L. 101-67-July 31, 1989. Sale of approximately 11,358 acres of the land will be the final sale of the designated acres.

The case files (N-60834 and N-59594) may be reviewed at the Las Vegas Field Office. A copy of the Decisions—may be obtained—by writing the Las Vegas Field Office at the above address or calling Cheryl Ruffridge, Realty Specialist, (702) 647-5064.

Interested parties may submit written comments as to the adequacy of the environmental assessments to the District Manager at the Las Vegas Field Office, Bureau of Land Management located at 4765 Vegas Drive, Las Vegas, NV 89108. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the

authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws.

Dated: December 9, 1998.

J. Robert Dunn,

Manager, Las Vegas Field Office.

[FR Doc. 98-33654 Filed 12-18-98; 8:45 am]

BILLING CODE 1430-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-120-08-1430-00; GP9.-0044 ; OR 53620]

Notice of Realty Action: Direct Sale of Public Land in Coos County, Oregon

December 11, 1998.

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of Realty Action.

SUMMARY: The following land is suitable for direct sales under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

T. 27 S., R. 14 W., Sec. 29 Lot 3,
Containing 2.28 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or a state instrumentally authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered in Coos County, Oregon using the direct sale procedures authorized under 43 CFR 2711.3-3. The parcel will be offered to Bally Bandon, L.P., Cascade Ranch, Inc., G.P., whose lands completely surround the subject parcel.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. Patents will be issued subject to all valid existing rights and reservations of record.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT:

Linda Petterson, Realty Specialist, Umpqua Field Office, at 1300 Airport Lane, North Bend, Oregon 97459, (Telephone 541 756-0100).

Dated: December 10, 1998.

Sue E. Richardson,

District Manager.

[FR Doc. 98-33656 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-950-1420-00-P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

The plats of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., December 3, 1998.

The plat representing the dependent resurvey of the west boundary and the subdivisional lines, T. 54 N., R. 73 W., Sixth Principal Meridian, Wyoming, Group No. 583, was accepted December 3, 1998.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 20 N., R. 79 W., Sixth Principal Meridian, Wyoming, Group No. 655, was accepted December 3, 1998.

The plat representing the dependent resurvey of a portion of the Fifth Standard Parallel North, through Range

79 West, a portion of the west boundary, and a portion of the subdivisional lines, T. 21 N., R. 79 W., Sixth Principal Meridian, Wyoming, Group No. 655, was accepted December 3, 1998.

The plat representing the dependent resurvey of a portion of the Tenth Guide Meridian, through Township 20 North, between Ranges 80 and 81 West, a portion of the east boundary, and a portion of the subdivisional lines, T. 20 N., R. 80 W., Sixth Principal Meridian, Wyoming, Group No. 655, was accepted December 3, 1998.

The plat representing the dependent resurvey of the Fifth Standard Parallel North, through Range 80 West, a portion of the Tenth Guide Meridian West, through Township 21 North, between Ranges 80 and 81 West, and a portion of the subdivisional lines, T. 21 N., R. 80 W., Sixth Principal Meridian, Wyoming, Group No. 655, was accepted December 3, 1998.

The plat representing the dependent resurvey of a portion of the First Guide Meridian East, through Township 26 North, between Ranges 8 and 9 East, portions of the subdivisional lines, and subdivision of section lines, and the subdivision of the section 6, T. 26 N., R. 9 E., Sixth Principal Meridian, Nebraska, Group No. 145, was accepted December 3, 1998.

All inquiries concerning the survey of the above described lands should be sent to the Chief, Cadastral Survey, Wyoming State Office, Bureau of Land Management, P. O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: December 3, 1998.

John P. Lee,

Chief Cadastral Survey Group.

[FR Doc. 98-33655 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revised collection of information (1010-0112)

SUMMARY: As required by the Paperwork Reduction Act of 1995 (Act), the Department of the Interior has submitted the revised collection of information discussed below to the Office of Management and Budget (OMB) for approval. The Act 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.

DATES: Submit written comments by January 20, 1999.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010-0112), 725 17th Street, N.W., Washington, D.C. 20503. Send a copy of your comments to the Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street, Herndon, Virginia 20170-4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Operations Division, Minerals Management Service, telephone (703) 787-1600. You may obtain copies of the supporting statement and collection of information by contacting MMS's Information Collection Clearance Officer at (202) 208-7744.

SUPPLEMENTARY INFORMATION:

Title and Form Number: Form MMS-131, Performance Measures Data Form.

Abstract: The Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior (Secretary) to preserve, protect, and develop offshore oil and gas resources; to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of the human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

We use the information collected on Form MMS-131 to evaluate the effectiveness of industry's continued improvement of safety and environmental management in the OCS. We can better focus regulatory and research programs on areas where the performance measures indicate that operators are having difficulty meeting MMS expectations. We can be more effective in leveraging resources by redirecting research efforts, promoting appropriate regulatory initiatives, and shifting inspection program emphasis. The performance measures will also give us a verifiable gauge to use in judging the reasonableness of company requests for any specific regulatory relief. This information also provides offshore operators and organizations with a credible data source to demonstrate to those outside the industry how well the industry and

individual companies are doing. Knowing how the offshore operators as a group are doing and where their own company ranks provides company management with information to focus their continuous improvement efforts. This should lead to more cost-effective prevention actions and, therefore, better cost containment. The collection of this information involves no proprietary information. No items of a sensitive nature are collected. Responses are voluntary.

Based upon our experience this first year, and the comments and suggestions from respondents, we revised Form MMS-131 to remove certain data elements that require OCS operators to perform calculations that we can easily do. The only substantive revision to the form is to clarify that respondents report all permit noncompliances under a National Pollutant Discharge Elimination System permit issued by the Environmental Protection Agency. This data element was previously and erroneously restricted to permit exceedences. Exceedences is a subcategory of noncompliances, but information for both categories is obtained from the same source—the operator's monthly Discharge Monitoring Report.

Estimated Number and Description of Respondents: Approximately 100 Federal OCS oil and gas or sulphur lessees.

Frequency: The frequency of reporting is annual. There are no recordkeeping requirements.

Estimated Annual Reporting and Recordkeeping Hour Burden: 960 total burden hours, averaging approximately 12 hours per response.

Estimated Annual Reporting and Recordkeeping Cost Burden: None.

Comments: Section 3506 (c)(2)(A) of the Act requires each agency “. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. . . .” Agencies must specifically solicit

comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses

section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by January 20, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208-7744.

Dated: October 21, 1998.

E. P. Danenberger,

Chief, Engineering and Operations Division.
[FR Doc. 98-33680 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 12, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by January 5, 1999.

Carol D. Shull,

Keeper of the National Register.

CONNECTICUT

Hartford County

Sloper—Wesoly House, 27 Grove Hill St.,
New Britain, 98001577

Windham County

Woodstock Hill Historic District, Roughly
along Plain Hill Rd., and Academy Rd.,
parts of Old Hall Rd. and Child Hill Rd.,
Woodstock, 98001578

LOUISIANA

Caldwell Parish

Landerneau Mound, Address Restricted,
Hebert vicinity, 98001579

NEW YORK

Essex County

Hubbard Hall, Court St., Elizabethtown,
98001584

Livingston County

House at No. 13 Grove Street (Mount Morris
MPS) 13 Grove St., Mount Morris,
98001582

House at No. 176 South Main Street (Mount
Morris MPS) 176 S. Main St., Mount
Morris, 98001581

House at No. 30 at Murray Street (Mount Morris MPS) 30 Murray St., Mount Morris, 98001585

House at No. 48 Grove Street (Mount Morris MPS) 48 Grove St., Mount Morris, 98001583

House at No. 8 State Street (Mount Morris MPS) 8 State St., Mount Morris, 98001580

OKLAHOMA

Logan County

Langston University Cottage Row Historic District, SW corner of Langston University, Langston, 98001593

Okmulgee County

Harmon Athletic Field, N of jct. of 12th St. and Creek Ave., Okmulgee, 98001588

Lake Okmulgee Dam Spillway Cascade, OK 56, 10 mi. W of US 62, Okmulgee vicinity, 98001591

Okmulgee Armory, Jct. of 2nd and Alabama Sts., Okmulgee, 98001589

Okmulgee Stock Pavilion, Jct. of Lagonda and Okmulgee Sts., Okmulgee, 98001590

Washita County

New Cordell Courthouse Square Historic District, Roughly bounded by Temple, E. Second, Glenn English, and E. Clay Sts., New Cordell, 98001592

WASHINGTON

Kittitas County

Kittitas County Fairgrounds, 512 N. Poplar St., Ellensburg, 98001594

WISCONSIN

Columbia County

Prairie Street Historic District, Roughly along W. Prairie St., including parts of S. Lewis St. and S. Charles St., Columbus, 98001586

Lafayette County

Benton Stone Water Tower, 49 Water St., Benton, 98001598

Marinette County

Independent Order of Odd Fellows—Lodge #189 Building, 1335 Main St., Marinette, 98001597

Milwaukee County

Milwaukee County Home for Dependent Children—Administration Building, 9508 Watertown Plank Rd., Wauwatosa, 98001587

Waukesha County

Reformed Presbyterian Church of Vernon, W234 S7710 Big Bend Rd., Vernon, 98001595

Waukesha County Airport Hanger, 24151 W. Bluemound Rd., Waukesha, 98001596

[FR Doc. 98-33647 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Public Meetings; correction.

SUMMARY: On December 10, 1998, the Commissioner of the Bureau of Reclamation signed the **Federal Register** notice concerning the announcement of three upcoming Glen Canyon TWG meetings in Phoenix, Arizona and Grand Canyon National Park and one AMWG meeting to be held in Phoenix, Arizona. While the agendas for the series of AMWG and TWG meetings were correct, the date and time of the last TWG meeting was incorrect.

The correct date, time, and location of the last TWG meeting is:

February 18, 1999—Grand Canyon National Park: The meeting will begin at 8:00 a.m. and end at 12:00 noon. The meeting will be held at the Albright Training Center, Grand Canyon National Park.

FOR FURTHER INFORMATION CONTACT: Bruce Moore, bureau of Reclamation, Salt Lake City, Utah at 801-524-3702.

Dated: December 15, 1998.

R. Steve Richardson,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 98-33684 Filed 12-18-98; 8:45 am]

BILLING CODE 4310-94-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on *December 8, 1998* a proposed consent decree in *United States v. Allegiance Healthcare Corp., et al*, Civil Action No. *98-0113-C*, was lodged with the United States District Court for the Western District of Virginia.

In this action, the United States and the Commonwealth of Virginia sought recovery of approximately \$22 million in response cost incurred as well as cost to be incurred by the United States and the Commonwealth in response to the release or threatened release of hazardous substances at the Greenwood Chemical Site ("the Site") located in Newtown, Albermarle County, Virginia.

Plaintiffs also seek a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), against Defendants holding them liable in future actions to recover further costs incurred at or in connection with the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Allegiance Healthcare Corp., et al.*, D.J. Ref. 90-11-2-679.

The proposed consent decree may be examined at the Office of the United States Attorney, Thomas B. Mason Building, 105 Franklin Rd., S.W., Suite One, Roanoke, Virginia 24011; at U.S. EPA Region, III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of \$7.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98-33651 Filed 12-18-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to The Clean Air Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Wisconsin Central Limited, et al.*, Civ. No. 98-C-1199, was lodged with the United States District Court for the Eastern District of Wisconsin, on December 9, 1998. That action was brought against defendants pursuant to Section 113 of the Clean Air Act ("the Act"), 42 U.S.C. 7413, for violations that occurred during the demolition of a Waukesha, Wisconsin foundry complex. Our complaint sought injunctive relief and civil penalties against defendants for violations of the National Emission Standard for Hazardous Air Pollutants promulgated for asbestos pursuant to

Section 112 and 114 of the Act, 42 U.S.C. 7412 and 7414, codified at 40 CFR part 61, Subpart M, and the Control of Particulate Emissions rules of the state implementation plan for the State of Wisconsin. The proposed consent decree requires the defendants to pay a civil penalty of \$110,000 and to comply with an asbestos abatement management program in their future work.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States v. Wisconsin Central Limited, et al.*, D.J. Ref. 90-5-2-1-2000/2.

The proposed consent decree may be examined at the office of the United States Attorney for the Eastern District of Wisconsin, 517 East Wisconsin Ave., Milwaukee, Wisconsin 53202; at the Region V office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 3rd floor, Washington, D.C. 20005, 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of \$7.50 for the decree (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States v. Wisconsin Central Limited, et al.*, D.J. Ref. 90-5-2-1-2000/2.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98-33652 Filed 12-18-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Pearson Plc, Pearson Inc. & Viacom International Inc., No. 1:98CV02836 (D.D.C., filed Nov. 23, 1998); Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v.*

Pearson plc, Pearson Inc., and Viacom International Inc., No. 1:98CV02836. On November 23, 1998, the United States filed a Complaint alleging that the proposed sale by Viacom International Inc. of certain publishing businesses to Pearson Inc. and Pearson plc (collectively "Pearson") would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Pearson to divest a comprehensive elementary school science program and textbooks for thirty-two college courses. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: 202-514-2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, DC.

Public comment is invited within sixty days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, D.C. 20530 (telephone: (202) 616-5935).

Constance Robinson,

Director of Operations and Director of Merger Enforcement, Antitrust Division.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

A. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District for the District of Columbia.

B. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

C. Defendants shall abide by and comply with the provisions of the

proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

D. Defendants will not consummate their transaction before the Court has signed this Stipulation and Order.

E. Pearson shall prepare and deliver affidavits in the form required by the provisions of Section IX of the proposed Final Judgment commencing no later than twenty (20) calendar days after the filing of the Complaint in this action, and every thirty (30) days thereafter pending entry of the Final Judgment.

F. In the event plaintiff withdraws its consent, as provided in paragraph B above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: November 23, 1998.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Mary Jean Moltenbrey,

Chief, United States Department of Justice, Antitrust Division, Civil Task Force, 325 7th Street, N.W., Suite 300, Washington, DC 20530, 202-616-5935.

FOR DEFENDANT VIACOM INTERNATIONAL INC.

Wayne D. Collins,

Shearman & Sterling, 599 Lexington Avenue, New York, N.Y. 10022, (212) 848-4127.

Attorney for Defendant Viacom International Inc.

FOR DEFENDANTS PEARSON plc and PEARSON INC.

Robert S. Schlossberg,

Morgan, Lewis & Bockius LLP, 1800 M Street, N.W., Washington, DC 20036-5869, 202-467-7212.

Attorney for Defendants Pearson plc and Pearson Inc.

SO ORDERED:

United States District Judge

Final Judgment

Whereas plaintiff the United States of America (hereinafter "United States"), has filed its Complaint herein, and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, prompt and certain divestiture of certain assets to one or more third parties to ensure that competition is substantially preserved is the essence of this agreement;

And Whereas, the parties intend to require defendants to divest, as viable lines of business, certain assets so as to ensure, to the sole satisfaction of the United States, that the Acquirer will be able to publish and market the assets as viable lines of business for the purpose of maintaining the current level of competition;

And Whereas, defendants have represented to the United States that the divestitures required below can and will be made as provided in this Final Judgment and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the person(s) to whom Pearson shall sell the Divestiture Products (as defined below).

B. "Divestiture Products" means all of the products identified on Exhibits A and B attached hereto. Each Divestiture Product includes all of the following:

1. unless non-assignable, all licenses, permits and authorizations issued by any governmental or private organization relating to the Divestiture Product;

2. unless non-assignable, all contracts, teaming arrangements, agreements, leases, commitments and understandings and their associated intangible rights pertaining to the Divestiture Product, including, but not limited to author permissions and other similar agreements, adoption and other agreements with purchasers, distribution agreements that relate to the Divestiture Product, vendor or supply

agreements with respect to components of the Divestiture Product;

3. unless non-assignable, all original and digital artwork, film plates, and other reproductive materials relating to the Divestiture Product, including, but not limited to all manuscripts and illustrations and any other content and any revisions or revision plans thereof in print or digital form;

4. all sales support and promotional materials, advertising materials and production, sales and marketing files relating to the Divestiture Product;

5. all existing customer lists and credit records, or similar records of all sales and potential sales of the Divestiture Product, and all other records maintained in connection with the Divestiture product;

6. except as provided in definition B.7, below, and unless non-assignable, all intangible assets relating to the Divestiture Product, including but not limited to all patents, copyrights and trademarks (registered and unregistered), common law trademark rights; licenses and sublicenses, contract rights, intellectual property, maskwork rights, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, quality assurance and control procedures; design tools; and all manuals and technical information relating to the Divestiture Product provided to employees, customers, suppliers, agents or licensees;

7. all titles of existing products comprising the Divestiture Product, including, but not limited to the titles "Discover Works," "Science Horizons," "Discover the Wonder," and "Destinations in Science," as applicable, but not any corporate trademarks or trade names of Pearson or Viacom;

8. all research data concerning historic and current research and development efforts relating to the Divestiture Product; and

9. at Acquirer's option, computers and other tangible assets used primarily for production of the Divestiture Product.

Pearson shall use its best efforts to facilitate the assignment to the Acquirer of any of the above that Pearson presently holds or uses pursuant to a license or any other agreement.

C. "Pearson" means defendants Pearson plc, a U.K. corporation with its headquarters in London, England, and Pearson, Inc., a Delaware corporation with its headquarters in New York, New York, and includes their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

D. "Retained Product" means any product offered for sale or in development by Pearson or Viacom as of November 1, 1998, that is not a Divestiture Product.

E. "Scott Foresman Addison Wesley" means the publishing activities of Addison Wesley Longman Inc. and Addison Wesley Educational Publishers, Inc, both wholly owned subsidiaries of Pearson Inc., that result in products bearing the "Scott Foresman," "Addison Wesley," "SFAW" or "Scott Foresman Addison Wesley" titles or imprints.

F. "Silver Burdett Ginn Inc." is a Delaware corporation with its headquarters in Parisippany, New Jersey, and is one hundred percent owned (through various subsidiaries) by Viacom.

G. "Viacom" means defendant Viacom International Inc., a Delaware corporation with its headquarters in New York, New York, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Pearson, as a condition of the sale or other disposition of any or all of the Divestiture Products, shall require the Acquirer to agree to be bound by the provisions of this Final Judgment.

IV. Divestiture of Assets

A. Pearson is hereby ordered and directed, in accordance with the terms of this Final Judgment, within two (2) months from the date this Final Judgment is filed with the Court, or within ten (10) calendar days from the date on which the sixty-day notice-and-comment period established by 15 U.S.C. § 16(b) has expired, whichever is later, to divest one of the two Divestiture Products listed on Exhibit A to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to thirty (30) calendar days.

B. Pearson is hereby ordered and directed, within five (5) months from the date this Final Judgment is filed with the Court, or within ten (10) calendar days from the date on which

the sixty-day notice-and-comment period established by 15 U.S.C. § 16(b) has expired, whichever is later, to divest all of the Divestiture Products listed on Exhibit B. The United States, in its sole discretion, may agree to an extension of this time period of up to thirty (30) calendar days.

C. Divestiture of the Divestiture Products shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Products can and will be operated by the Acquirer as viable, ongoing businesses. Divestiture of the Divestiture Products shall be made to an Acquirer for whom it is demonstrated to the sole satisfaction of the United States that (1) the purchase is for the purpose of competing effectively in the publication and sale of the Divestiture Products and (2) the Acquirer has the managerial, operational, and financial capability to compete effectively in the publication and sale of the Divestiture Products. Defendants are prohibited from entering into any agreement with the Acquirer to license exclusively any Divestiture Product to the Defendants for sale in the United States.

D. Pearson shall retain the right to use a Divestiture Product listed on Exhibit A to the extent necessary to fulfill the terms of agreements, in effect as of the date this Final Judgment is filed with the Court, with purchasers of the product lines listed on Exhibit A. The Acquirer of one of the Divestiture Products listed on Exhibit A shall grant Pearson a royalty-free license to continue to use that Divestiture Product to the extent necessary to fulfill the terms of such existing agreements. The Acquirer of any Divestiture Product that Pearson currently uses, in whole or in part, in any Retained Product, shall grant Pearson a royalty-free license to continue to use the Divestiture Product to the same extent in the production and sale of the Retained Product.

E. In accomplishing the divestiture ordered by this Final Judgment, the defendants shall make known, as expeditiously as possible, the availability of the Divestiture Products. The defendants shall provide any person making inquiry regarding a possible purchase a copy of the Final Judgment. The defendants shall also offer to furnish to any bona fide prospective Acquirer, subject to customary confidentiality assurances, all reasonably necessary information regarding the Divestiture Products, except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that

such information is made available to any other person. Defendants shall permit bona fide prospective purchasers of the Divestiture Products to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestiture required by this Final judgment.

F. Defendants shall use all commercially practical means to enable the Acquirer of one of the Divestiture Products listed on Exhibit A to employ those personnel primarily responsible for the editorial content of that Divestiture Product, including editors, authors, and science experts. Defendants shall encourage and facilitate employment of such employees by the Acquirer of one of the Divestiture Products listed on Exhibit A, and shall remove all impediments that may deter these employees from accepting such employment.

G. Defendants shall make available to the Acquirer of any Divestiture Product, as applicable, information about any Pearson or Viacom employee primarily responsible for the editorial content of any Divestiture Product listed on Exhibit B, and any Pearson or Viacom employee primarily responsible for the production, design, layout, sale or marketing of any Divestiture Product. Defendants shall not interfere with any negotiations by the Acquirer to employ any such employee, but may make counter-offers for employment.

H. Pearson shall take all reasonable steps to accomplish quickly the divestitures contemplated by this Final Judgment.

V. Appointment of Trustee

A. In the event that Pearson has not divested a Divestiture Product within the time specified in Section IV.A or IV.B of this Final Judgment, Pearson shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States, in its sole discretion, to effect the divestiture of the Divestiture Products. Unless the United States otherwise consents in writing, the divestiture shall be accomplished in such a way as to satisfy the United States that the Divestiture Products can and will be used by the Acquirer as viable on-going businesses. The divestiture shall be made to an Acquirer for whom it is demonstrated to the United States' sole satisfaction that the Acquirer has the managerial, operational, and financial capability to compete effectively in the publication and sale of the Divestiture Products, and that none of the terms of

the divestiture agreement interfere with the ability of the Acquirer to compete effectively in the publication and sale of the Divestiture Products.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Products. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the power and authority to hire at the cost and expense of Pearson any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. Pearson may select which of the two Divestiture Products listed on Exhibit A shall be sold by the trustee, provided that the United States determines, in its sole discretion, that the Divestiture Product selected by Pearson has been developed and maintained at levels sufficient to ensure its competitive viability. Pearson shall provide the United States with information to enable the United States to make this determination. Should the United States determine, in its sole discretion, that the Divestiture Product selected by Pearson has not been developed and maintained at levels sufficient to ensure its competitive viability, the trustee shall sell the other Divestiture Product listed on Exhibit A.

D. The trustee shall serve at the cost and expense of Pearson, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Pearson and the trust shall then be

terminated. The compensation of such trustee and that of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Products and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

E. Pearson and Viacom shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of Pearson and Viacom, and defendants shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire or was contacted about acquiring any interest in any Divestiture Product, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Divestiture Products.

G. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed on the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if

necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, Pearson or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture pursuant to Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Pearson. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Products, together with full details of the same. Within fifteen (15) days after receipt of the notice, the United States may request additional information from Pearson, the proposed Acquirer, or any other third party concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Pearson or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request unless the parties agree otherwise. Within thirty (30) days after receipt of the notice or within twenty (20) days after the United States' receipt of the additional information, whichever is later, the United States shall notify in writing Pearson and the trustee, if there is one, stating whether it objects to the proposed divestiture. If the United States notifies in writing Pearson and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Pearson's limited right to object to the sale under Section V.B of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer, or upon objection by the United States, a divestiture proposed under Section IV or V shall not be consummated. Upon objection by Pearson under Section V.B, the proposed divestiture shall not be accomplished unless approved by the Court.

VII. Financing

Pearson shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

VIII. Preservation of Assets

Until the divestiture required by Section IV.A and IV.B of this Final Judgment have been accomplished:

A. Defendant shall take all steps necessary to ensure that each Divestiture Product will be maintained and developed as an independent, ongoing, economically viable and active competitor in its respective line of business and that the product management for all Divestiture Products, including the product development, marketing and pricing information and decision-making be kept separate and apart from, and not influenced by, Pearson's and Viacom's businesses in other products.

B. Defendants shall use all reasonable efforts to maintain and increase sales of the Divestiture Products, and shall maintain at 1998 or previously approved levels for 1999, whichever is applicable, development, promotional advertising, sales, marketing, and merchandising support for the Divestiture Products.

C. Defendants shall take all steps necessary to ensure that the Divestiture Products are fully maintained. Defendants shall not transfer or reassign those personnel primarily responsible for the editorial content of the Divestiture Products listed on Exhibit A, including editors, authors, and science experts. Each of defendants' employees whose predominant responsibility is the editorial content of any Divestiture Product listed on Exhibit B, or the production, design, layout, sale or marketing of any Divestiture Product shall not be transferred or reassigned to any other of defendants' products, except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy, provided that defendants give the United States and Acquirer ten (10) days' notice of such transfer.

D. Defendants shall continue to fund and develop the Divestiture Products listed on Exhibit A as they would have been funded and developed without their transaction until one is sold pursuant to this Final Judgment.

E. Except as part of a divestiture approved by the United States, in its sole discretion, defendants shall not sell any Divestiture Products.

F. Defendants shall take no action that would jeopardize the sale of the Divestiture Products, or that would interfere with the ability of any Trustee to effect a sale of any Divestiture Product.

G. Defendants shall appoint a person or persons to manage the Divestiture Products, and who shall be responsible

for defendants' compliance with this section.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this action, and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or V of this Final Judgment, Pearson shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person, who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in all or any portion of the Divestiture Products, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Pearson has taken to solicit an Acquirer for any of the Divestiture Products and to provide required information to prospective Acquirers, including the limitation, if any, on such information.

B. Within twenty (20) calendar days of the filing of the Complaint in this action, Pearson shall deliver to the United States an affidavit that describes in reasonable detail all actions Pearson has taken and all steps Pearson has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The affidavit shall describe, but not be limited to, Pearson's efforts to maintain and operate the Divestiture Products as active competitors, maintain the management, staffing, research and development activities, sales, marketing and pricing of the Divestiture Products, and maintain the Divestiture Products in operable condition at current capacity configurations. Pearson shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Pearson's earlier affidavit(s) filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Until one year after a divestiture has been completed, or, if a divestiture is not completed, one year after the trust under Section V is terminated, Pearson shall preserve all records of all efforts made to preserve and divest the Divestiture Products.

X. Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to Pearson made to its principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Pearson, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of Pearson and without restraint or interference from it, to interview, either informally or on the record, directors, officers, employees, and agents of Pearson, which may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to Pearson at its principal offices, Pearson shall submit written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in this Section X shall be divulged by any representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Pearson to the United States, Pearson represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Pearson marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal rules of Civil Procedure," then the United States shall give ten (10) days' notice to Pearson prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Pearson is not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply

to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination of Provisions

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____
Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

United States District Judge

Exhibit A

1. All textbooks or other educational materials offered for sale or provided or under development by any subsidiary or division of Silver Burdett Ginn Inc. that refer or relate to the subject matter of science for grades Kindergarten through six, including, but not limited to (1) student editions; (2) teacher editions; (3) supplemental materials, including, but not limited to workbooks, notebooks, charts, audio, video, software, CD-ROM, Internet and broadcast components, manipulatives and equipment, and similar materials; (4) teacher support and staff development materials, including, but not limited to teacher resource books, assessment materials and answer keys, test generators, teaching guides, overhead transparencies, lesson plans and outlines and curriculum materials; and (5) any other materials in any form, format or media marketed or intended to be marketed as being ancillary to the program or to an individual title within the program. This Divestiture Product does not include any products that are necessary to fulfill the terms of agreements between Silver Burdett Ginn Inc. and purchasers of products relating to the subject matter of science for grades Kindergarten through six that are in existence as of the date this Final Judgment is filed with the Court.

or

2. All textbooks or other educational materials offered for sale or provided or under development by any subsidiary or division of Pearson Inc. doing business as Scott Foresman Addison Wesley that refer or relate to the subject matter of science for grades Kindergarten through six, including, but not limited to (1) student editions; (2) teacher editions; (3) supplemental materials, including, but not limited to workbooks, notebooks, charts, audio, video, software, CD-ROM, Internet and broadcast components, manipulatives and equipment, and similar materials; (4) teacher support and staff development materials, including, but not limited to teacher resource books, assessment materials and answer keys, test

generators, teaching guides, overhead transparencies, lesson plans and outlines and curriculum materials; and (5) any other materials in any form, format or media marketed or intended to be marketed as being

ancillary to the program or to an individual title within the program. This Divestiture Product does not include any products that are necessary to fulfill the terms of agreements between Pearson Inc. and

purchasers of products relating to the subject matter of science for grades Kindergarten through six that are in existence as of the date this Final Judgment is filed with the Court.

EXHIBIT B

College course	Divestiture products
Abstract Algebra	Herstein, Abstract Algebra (Prentice Hall). Dummit/Foote, Abstract Algebra (Prentice Hall).
Anatomy & Physiology (One Term)	Tortora, Introduction to the Human Body: The Essentials of Anatomy and Physiology (Addison Wesley).
Anatomy & Physiology (Two Term)	Tortora/Grabowski, Principles of Anatomy and Physiology (Addison Wesley).
Art Appreciation	Fichner-Rathus, Understanding Art (Prentice Hall).
Circuits and Networks	Irwin, Basic Engineering Circuit Analysis (Prentice Hall). Johnson/Johnson/Hilbrun/Scott, Electric Circuit Analysis (Prentice Hall). Thomas/Rosa, The Analysis & Design of Linear Circuits (Prentice Hall). Johnson/Hilbrun/Johnson/Scott, Basic Electric Circuit Analysis (Prentice Hall).
Classical Mythology	Morford/Lenardon, Classical Mythology (Addison Wesley).
Classroom Management	Wolfgang, Solving Discipline Problems (Allyn & Bacon). Cangelosi, Classroom Management Strategies (Addison Wesley). Edwards, Classroom Discipline & Management (Prentice Hall). Burden, Classroom Management & Discipline (Addison Wesley).
Concrete Engineering	McCormac, Design of Reinforced Concrete (Addison Wesley). Wang/Salmon, Reinforced Concrete Design (Addison Wesley).
Controls Engineering	Nise, Control Systems Engineering (Addison Wesley). Kuo, Automatic Control Systems (Prentice Hall).
Environmental Economics	Goodstein, Economics and the Environment (Prentice Hall).
Fortran	Etter, Structured Fortran 77 for Engineers and Scientists (Addison Wesley). Etter, Fortran 90 for Engineers (Addison Wesley).
Human Anatomy	Tortora, Principles of Human Anatomy (Addison Wesley).
Human & Cultural Geography	Jordan-Bychkov/Domosh, The Human Mosaic: A Thematic Introduction to Cultural Geography (Addison Wesley).
Instructional Design	Smith/Ragan, Instructional Design (Merrill—Prentice Hall). Kemp/Morrison/Ross, Designing Effective Instruction (Merrill—Prentice Hall). Rothwell/Kazanas, Mastering the Instructional Design Process: A Systematic Approach (Jossey-Bass Publishers).
Intermediate Microeconomics	Browning/Zupan, Microeconomic Theory and Applications (Addison Wesley).
International Corporate Finance	Shapiro, Multinational Financial Management (Prentice Hall). Shapiro, Foundations of Multinational Financial Management (Prentice Hall).
International Economics	Salvatore, International Economics (Prentice Hall).
K-12 Curriculum	McNeil, Curriculum: A Comprehensive Introduction (Addison Wesley).
Manufacturing Engineering	Groover, Fundamentals of Modern Manufacturing (Prentice Hall). Degarmo/Black/Kohser, Materials and Processes in Manufacturing (Prentice Hall).
Mathematics for Elementary Teachers	Musser/Burger, Mathematics for Elementary Teachers (Prentice Hall).
Measurement and Assessment of Students	Kubiszyn/Borich, Educational Testing and Measurement (Addison Wesley).
Microbiology (Non-majors)	Black, Microbiology: Principles and Applications (Prentice Hall).
Multicultural Education	Banks/Banks, Multicultural/Education: Issues and Perspectives (Allyn & Bacon). Grant/Sleeter, Turning on Learning: Five Approaches for Multicultural Teaching Plans for Race, Class, Gender and Disability (Prentice Hall). Sleeter/Grant, Making Choices for Multicultural Education: Five Approaches to Race, Class, and Gender (Merrill—Prentice Hall).
Operating Systems	Silberschatz/Galvin, Operating System Concepts (Addison Wesley).
School Administration: Supervision	Acheson/Gall, Techniques in the Clinical Supervision of Teachers (Addison Wesley). Oliva/Pawlis, Supervision for Today's Schools (Addison Wesley).
Structural Engineering	McCormac/Nelson, Structural Analysis: A Classical & Matrix Approach (Addison Wesley).
Surveying	McCormac, Surveying Fundamentals (Prentice Hall).
Teaching Math to Elementary Students	Reys/Suydam/Linquist/Smith, Helping Children Learn Mathematics (Allyn & Bacon). Hatfield/Edwards/Bitter, Mathematics Methods for elementary and Middle School (Ally & Bacon). Sheffield/Cruikshank, Teaching and Learning Elementary and Middle School Mathematics (Merrill—Prentice Hall).
Teaching Reading to Secondary Students	Heddens, Today's Mathematics (Prentice Hall). Ruddell, Teaching Content Reading & Writing (Allyn & Bacon). Ryder, Reading and Learning in the Content Areas (Prentice Hall). Cooter/Flynt, Teaching Reading in Content Areas (Prentice Hall). Manzo/Manzo, Content Area Literacy (Merrill—Prentice Hall).
Technical Math	Calter, Technical Mathematics (Prentice Hall).
Technical Math with Calculus	Calter, Technical Mathematics with Calculus (Prentice Hall).
Technical Writing	Houp, Reporting Technical Information (Allyn and Bacon).

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On November 23, 1998, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Pearson plc and its wholly subsidiary, Pearson Inc. (collectively "Pearson"), of certain publishing businesses of Viacom International Inc. ("Viacom") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Pearson and Viacom, two of the nation's largest publishers of textbooks and other educational materials, compete head-to-head in the development, marketing, and sale of comprehensive elementary school science programs and in the development, marketing, and sale of textbooks used in thirty-two college courses. Unless the acquisition is blocked, competition for these science programs and college textbooks would be substantially lessened, leading to higher prices, a reduction in the value of materials or service provided to teachers and students, or lower quality. The request for relief in the Complaint seeks: (1) a judgment that the proposed merger would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing consummation of the merger agreement; (3) an award of costs to the plaintiff; and (4) such other relief as the Court may deem just and proper.

Shortly before the Complaint was filed, the parties reached a proposed settlement that permits Pearson to complete its acquisition of Viacom's publishing businesses, yet preserves competition in the markets in which the transaction would raise significant competitive concerns. Along with the Complaint, the parties filed a Stipulation and proposed Final Judgment setting out the terms of the settlement.

The proposed Final Judgment orders Pearson to divest either its or Viacom's existing elementary school science program, along with the program that that party is currently developing, to an acquirer acceptable to the United States. Unless the United States agrees to a time extension, Pearson must complete this divestiture within two months of the filing of the Complaint, or within ten days of the expiration of the sixty-day statutory notice-and-comment period that commenced with the publication of

this Competitive Impact Statement, whichever is later. The proposed Final Judgment also orders Pearson to divest fifty-five college textbooks so that competition in the development, marketing, and sale of textbooks in each of the thirty-two courses will be preserved. Pearson must complete the college textbook divestiture within five months of the filing of the Complaint, or within ten days of the expiration of the sixty-day statutory notice-and-comment period, whichever is later.

If Pearson does not complete the divestitures within the appropriate time periods, the Court, upon application of the United States, is to appoint a trustee selected by the United States to complete the remaining divestitures. The proposed Final Judgment also requires Pearson and Viacom to take all steps necessary to maintain and market the products to be divested as independent and active competitors until the divestitures mandated by the proposed Final Judgment have been accomplished.

The plaintiff and defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the proposed Final Judgment and punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Pearson Inc. is a Delaware corporation headquartered in New York City, that publishes textbooks and other educational materials under such names as Addison Wesley, Scott Foresman and Harper Collins. Its parent, Pearson plc, is an international media corporation incorporated in the United Kingdom and based in London.

Viacom, a Delaware corporation based in New York City, publishes textbooks and other educational materials under names including Prentice Hall, Silver Burdett Ginn, and Allyn & Bacon. Its parent, Viacom, Inc., is one of the world's largest entertainment and publishing companies and is a leading competitor in nearly every segment of the international media marketplace.

On May 17, 1998, the defendants signed an agreement under which Pearson would acquire educational, professional, and reference publishing businesses from Viacom. This transaction, which would increase concentration in already concentrated

markets, precipitated the government's suit.

B. Product Markets

1. Basal Elementary School Science Program Market

a. Description of the Market

Most elementary schools throughout the United States teach science through comprehensive science programs known as "basal elementary school science programs," which provide organization and structure, as well as guidance and support, in how to teach the subject. Student textbooks and teacher's editions of the textbooks are the core of most basal programs, but most also include other important educational materials and services called "ancillary" materials, consisting of student workbooks and notebooks, audio-visual aids such as charts and videotapes, and materials for student science exercises and experiments. Basal elementary school science programs also often include services such as teacher training sessions.

School districts or individual schools desiring to purchase basal elementary school science programs would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in the price of these programs or a reduction in the value of ancillary materials and services provided with them. For example, a school seeking to purchase a basal elementary school science program would not respond to a price increase by considering basal programs in mathematics or reading. Nor would schools substitute any of the few nontraditional, alternative science programs in sufficient numbers to defeat a small but significant price increase in basal elementary school science programs.

b. Harm or Competition as a Consequence of the Merger

Pearson and Viacom are two of only four larger publishers of basal elementary school science programs. They have consistently led the market, capturing a combined share of roughly fifty percent or more of new sales over the last six years. Pearson's *Discover the Wonder* program is a close substitute for Viacom's *Discovery Works* program. Pearson and Viacom also compete to maintain a improve program quality. Both are currently developing new basal elementary school science programs that they will offer for sale throughout the United States beginning in 1999.

Pearson and Viacom's aggressive competition has led to lower prices, more and better ancillary materials and services, and improvements in product

quality. The proposed acquisition would eliminate this competition and would further concentrate an already highly concentrated market.

Successful entry into the basal elementary school science program market is difficult, time consuming, and costly. A publisher would need to assemble an editorial and sales staff to develop, test, and market the new program, and would need to overcome schools' reluctance to purchase an elementary school science program from a firm lacking an established reputation as an experienced and reliable science publisher. Additionally, the science market is less attractive to new entrants because elementary school science funding is neither as large nor as reliable as it is for core subjects like math and reading.

The Complaint alleges that the transaction would likely have the following effects:

- a. actual and future competition between Pearson and Viacom would be eliminated;
- b. competition generally in the market for basal elementary school science programs would likely be substantially lessened;
- c. prices for basal elementary school science programs would likely increase or the value of ancillary materials or services would likely decline; and
- d. competition in the development and improvement of basal elementary school science programs would likely be substantially lessened.

2. College Textbook Markets

a. Description of the Markets

College professors generally select a textbook to serve as the primary teaching material for their course. Textbooks provide the core written material for a course, serve as the foundation for the professor's overall lesson plan, and set forth the framework for class discussions. Although it is the professor that chooses the textbook, students purchase the textbooks, usually from a college bookstore.

Publishers often attempt to induce a professor to select their textbooks by offering free ancillary educational materials such as a teacher's edition of the textbook, audio-visual teaching tools, and copies of the textbook for teaching assistants. Publishers also sometimes offer textbooks to students as part of discounted packages that include further ancillary educational materials such as CD-ROMs and study guides.

The Complaint identified thirty-two college courses in which Pearson and Viacom were among the leading competitors in the provision of

textbooks and related educational materials. These courses primarily fell within the disciplines of biological sciences, engineering, economics, teachers' education, mathematics and computer science. In each of these courses, textbooks are used as the primary teaching materials. A small but significant increase in the price of a textbook for a college course—or a small but significant decrease in the value of the ancillary materials provided with the textbook—would not cause a significant number of professors or students to switch to any alternative products. Used textbooks also cannot defeat an increase in price of new textbooks or a decrease in the supply of ancillaries provided with them. The supply of used textbooks is limited, and professors usually require use of the newest edition of a textbook, which is generally revised every three to four years.

b. Harm to Competition as a Consequence of the Merger

In each of the thirty-two college textbook markets identified in the Complaint, Pearson and Viacom compete vigorously by offering textbooks that are close substitutes. Together, they account for a major share of new textbook sales, and face significant competition from only a small number of other publishers.

Competition between Pearson and Viacom has resulted in lower prices, more and better ancillary materials for professors and students, and improved product quality. The proposed acquisition would eliminate this competition, give Pearson the ability to raise the price or reduce the value of materials, and would further concentrate these already highly concentrated markets.

In each of the thirty-two college textbook markets, there is unlikely to be timely entry by any company offering textbooks and ancillary materials that would be sufficient to defeat an anticompetitive increase in price or decrease in ancillary materials. Successful entry involves a costly and time-consuming process in which a publisher must locate an author qualified to write a new textbook, and assemble an editorial staff to edit and develop the textbook. In addition, it must have numerous professors to review the textbook and a large sales staff to market it. Entry is also impeded by the difficulty of challenging the reputation of successful incumbent textbooks.

The Complaint alleges that the transaction would likely have the following effects:

a. actual and future competition between Pearson and Viacom would be eliminated;

b. competition generally in the markets for the sale of textbooks and ancillary materials for each of the college courses identified in the Complaint would likely be substantially lessened;

c. prices for textbooks and ancillary materials for each of the college courses identified in the Complaint would likely increase or the value of ancillary materials would likely decline; and

d. competition in the development and improvement of college textbooks and ancillary materials in each of the college courses identified in the Complaint would likely be substantially lessened.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to eliminate the anticompetitive effects of Pearson's proposed acquisition of publishing businesses from Viacom.

The proposed Final Judgment requires divestiture of either Pearson's or Viacom's basal elementary school science program to an acquirer acceptable to the United States within two months after the filing of the proposed Final Judgment in this matter, or within ten days after the expiration of the sixty-day statutory notice-and-comment period that commenced with the publication of this Competitive Impact Statement in the Federal Register, whichever is later. This divestiture includes all textbooks or other educational materials offered for sale or provided or under development that refer or relate to the subject matter of science for elementary school grades, including, but not limited to (1) student editions; (2) teacher editions; (3) supplemental materials, including but not limited to workbooks, notebooks, charts, audio, video, software, CD-ROM, Internet and broadcast components, manipulatives and equipment, and similar materials; (4) teacher support and staff development materials, including, but not limited to teacher resource books, assessment materials and answer keys, test generators, teaching guides, overhead transparencies, lesson plans and outlines and curriculum materials; and (5) any other materials in any form, format or media marketed or intended to be marketed as being ancillary to the program or to an individual title within the program.

Pearson also must divest the fifty-five college textbooks identified on Exhibit B to the proposed Final Judgment. That

exhibit specifies the one or more textbooks in each course that must be divested to ensure that each college textbook market suffers no reduction in competition. The college textbook divestitures must be completed within five months after the filing of the proposed Final Judgment in this matter, or within ten days after the expiration of the sixty-day statutory notice-and-comment period, whichever is later. Until the divestiture takes place, Pearson is required to develop and maintain its and Viacom's products as independent ongoing, economically, viable, and active competitors, and to continue to fund their development, promotional advertising, sales, marketing, merchandising, and support.

If Pearson fails to make the required divestitures within the applicable time periods, the Court will appoint a trustee selected by the United States to effect the divestitures. Pearson may select which basal elementary school science program the trustee will divest, so long as that program has been developed and maintained at a level sufficient to ensure its competitive viability. If the United States determines, in its sole discretion, that Pearson has not adequately developed and maintained that program's competitive viability, the trustee will sell the other program.

The proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

The proposed Final Judgment takes steps to ensure that the acquirers of the divested products will be viable and effective competitors. The United States must be satisfied that the acquiring parties have the ability and intention to publish and market the divested products as viable, ongoing businesses. The proposed Final Judgment also directs Pearson to use all commercially practical means to enable the acquirer of the basal elementary school science program to hire the personnel primarily responsible for the program's editorial content, including editors, authors, and science experts, and to encourage and facilitate their employment by the acquirer. Prior to divestiture, Pearson

also may not transfer any of these employees to new positions within the company. The proposed Final Judgment also requires that Pearson provide acquirers with information about the employees responsible for the editorial content of the college textbooks to be divested, and about the employees primarily responsible for the production, design, layout, sale or marketing of all of the divested products. The proposed Final Judgment forbids Pearson and Viacom from interfering with any acquirer's employment negotiations with those employees, and from transferring some of these employees—those spending the predominant portion of their time on a divestiture product—to new positions prior to the divestitures.

The proposed Final Judgment requires sale of all the tangible and intangible assets that make up each divestiture product. It expressly defines each divestiture product to include all associated intellectual property, licenses, contracts, artwork, promotional and advertising materials, customer lists, and research data. The intellectual property specifically includes the titles of all existing products to be acquired, but not trademarks or trade names that refer to Pearson or Viacom. Exhibit A of the proposed Final Judgment identifies in detail the specific items (including student editions, teacher editions, and ancillary materials) that are included within the basal elementary school science program that Pearson must divest. It provides, however, that Pearson may continue to use the divested basal elementary school science program to the extent necessary to fulfill its or Viacom's obligations under existing contracts with purchasers. These obligations consist mainly of the provision of replacement copies of consumable workbooks or lost or damaged textbooks. The proposed Final Judgment requires that the acquirer grant Pearson a royalty-free license so that it may continue to use the divested basal elementary school science program for this limited purpose.

The proposed Final Judgment is thus designed to maintain the present level of competition in the market for basal elementary school science programs and in the thirty-two college textbook markets identified in the Complaint by replacing the competitor eliminated as a result of the merger with one or more that is equally effective. It accomplishes this goal by requiring prompt divestitures so that the acquirer has adequate time to participate in the significant upcoming sales

opportunities in schools and colleges, by providing the acquirer with an opportunity to employ the personnel that are critical to the success of the divested products, and by requiring divestiture of all tangible and intangible assets that make up each of those products.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains

jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Pearson and Viacom. The United States is satisfied that the divestiture of the assets specified in the proposed Final Judgment will facilitate continued viable competition in the market for basal elementary school science programs and in the thirty-two markets for college textbooks identified in the Complaint. The United States is satisfied that the proposed relief will prevent the merger from having anticompetitive effects in these markets. The divestitures required by the proposed Final Judgment will preserve the structure of the markets that existed prior to the merger and will preserve the existence of independent competitors.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States v. Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or

to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."¹ Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981). Precedent requires that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.²

The proposed Final judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard

¹ 119 Cong. Rec. 24598 (1973). See also *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

² *United States v. Bechtel*, 648 F.2d at 666 (internal citations omitted) (emphasis added); see *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette Co.*, 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."³

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

FOR PLAINTIFF UNITED STATES OF AMERICA

Dated: December 10, 1998.

Respectfully submitted,

John W. Poole (D.C. Bar #34136)

Senior Trial Attorney, U.S. Department of Justice, Antitrust Division, Civil Task Force, 325 Seventh Street, N.W., Suite 300, Washington, DC 20530, Telephone: (202) 616-5943, Facsimile: (202) 307-9952.

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BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96-44]

Melvin N. Seglin, M.D. Continuation of Registration

On August 21, 1996, the then-Director, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Melvin N. Seglin, M.D. (Respondent) of Evanston, Illinois, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AS4328274, under 21 U.S.C. 824(a)(5), and deny any pending applications for renewal of such registration as a practitioner, under 21 U.S.C. 823(f), for reason that he has been excluded from participation in a program pursuant to 42 U.S.C. 1320a-7(a).

By letter dated August 29, 1996, Respondent, acting *pro se*, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Chicago, Illinois on April 9 and 10, 1997, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact,

³ *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), quoting *Gillette*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

conclusions of law and argument. On May 29, 1998, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be continued. Neither party filed exceptions to the Administrative Law Judge's Opinion and Recommended Ruling and on July 1, 1998, Judge Bittner transmitted the record of these proceedings to the then-Acting Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 131667, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent is a psychiatrist licensed to practice medicine in Illinois. He has held DEA Certificate of Registration AS4328274 since 1971. In 1981, he enrolled as a provider with the Illinois Department of Public Aid (IDPA) Medical Assistance Program. In submitting claims for reimbursement, providers must list the appropriate code for each service performed. IDPA does not reimburse providers for either telephone consultations or for time spent documenting a patient file.

In 1990, the Illinois State Police initiated an investigation of Respondent after learning that he was filing an unusually large number of IDPA claims. Respondent routinely billed IDPA for his care of patients in long-term care facilities listing code 90844. The description accompanying code 90844 is "[i]ndividual medical psychotherapy, with continuing medical diagnostic evaluation, and drug management when indicated, including psychoanalysis, insight oriented, behavior modifying or supportive psychotherapy; 45 minutes minimum."

Investigators interviewed personnel at four long-term care facilities where Respondent saw patients. The personnel at these facilities indicated that Respondent spent on average between 5 and 15 minutes with each patient. The investigators later calculated the maximum average amount of time that Respondent could have spent with each patient at each facility by using the total number of patients he had at a facility and the total time he spent at the

facility. These calculations revealed that on average, Respondent could not have spent more than 26 minutes with each patient at one facility; 15.4 minutes per patient at another facility; 19.6 minutes per patient at a third facility; and 10.6 minutes with each patient at the fourth facility.

On April 11, 1991, investigators interviewed Respondent concerning his billing practices. Respondent indicated that he spent approximately 15 minutes with each patient at the long-term care facilities. Respondent advised the investigators that he was familiar with the various billing codes and the amount of time he must spend with a patient to use a particular code. He indicated however that when determining the length of a patient session, he included time spent documenting the patient chart. He further indicated that although he knew that telephone consultations were not covered, he billed for them because he considered them crisis interventions. Respondent acknowledged that he was accountable for the discrepancies between the billing codes he used and the actual amount of time spent with each patient, and that he had had "many sleepless nights" over this matter. Respondent justified the billings by considering the time and effort he expended and the complexity of the cases. There was no attempt by Respondent to conceal his over-billing and no evidence that Respondent charged for visits that did not occur.

A second interview was conducted with a court reporter present on April 12, 1991, during which Respondent essentially repeated what he had said during the first interview. Respondent stated that other than carelessness, he could provide no explanation for the discrepancy between the billing codes he used and the actual time he spent with his patients. He stated that he was familiar with the billing codes and therefore could not plead ignorance. He acknowledged that he was legally responsible for his billing practices and that he had been improperly using the 45-minute code for his patient visits.

An auditor with the Illinois State Police Medicaid Fraud Control Unit conducted an analysis of the value of the services for which Respondent billed as opposed to the value of those he actually performed. The analysis revealed that between January 1, 1987 and March 31, 1991, Respondent was overpaid \$148,309.23 by Medicare and that between October 1, 1987 and April 30, 1991, he was overpaid \$224,602.08 by Medicaid. Therefore the auditor concluded that Respondent over-billed

approximately \$372,911.31 during the period covered by the investigation.

On February 19, 1992, Respondent was indicted in the Circuit Court of Cook County, Illinois, on one felony count of vendor fraud and two felony counts of theft. On April 21, 1993, following a bench trial, Respondent was convicted of vendor fraud, and on September 8, 1993, he was sentenced to 30 months probation and ordered to pay restitution totaling \$200,000 to the IDPA and the United States Department of Health and Human Services (DHHS).

Thereafter, on April 15, 1994, DHHS notified Respondent of his five-year mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a-7(a). Then on June 9, 1994, the IDPA terminated Respondent from its Medical Assistance Program. On December 23, 1994, Respondent and the United States Attorney for the Northern District of Illinois entered into a Stipulation for Compromise pursuant to which the United States Attorney agreed not to bring Federal criminal charges against Respondent for Medicare fraud in exchange for Respondent's agreement to pay \$80,000 to the United States.

At the hearing in this matter, two psychiatrists testified who began seeing Respondent's long-term care patients following his termination from the Medical Assistance Program. Both stated that the patients had received excellent care from Respondent. One testified that seeing patients in a facility is different than seeing them in an office setting, that it is not uncommon for patients at a facility to request attention from the doctor even though they are not scheduled for a session on that day, and that he is frequently called for emergencies at odd times. The psychiatrist further testified that he does not use the 90844 code for his long-term care patients because he generally spends less time with those patients than required for that code.

Personnel from the various long-term care facilities where Respondent saw patients testified on Respondent's behalf. They indicated that Respondent is a capable physician who is honest, compassionate and attentive to his patients. He frequently had unscheduled informal and emergency contacts with his patients and he worked well with the staffs at the various facilities.

Respondent is currently providing medical services to inmates at a local jail. According to the medical director of the company that hired Respondent, he fully disclosed his background before he was hired. She testified that Respondent is a reliable and conscientious employee

whose performance is excellent. The medical administrator further testified that Respondent needs to be able to provide controlled substances to the inmates in order to keep his position with the company.

Finally, Respondent testified on his own behalf. He stated that the billing codes did not take into account the nature of the work performed in long-term care facilities, but instead seemed to be geared towards office visits. Respondent explained that he did not time his sessions with patients at the long-term care facilities because he was often approached informally by patients. Additionally, emergencies and interruptions made it difficult to accurately time the sessions. Regarding his over-billing, Respondent testified that he never intended to conceal his method of billing, that he had thought that it was acceptable to use the code he did, and that he had never thought such conduct would lead to a criminal indictment. When asked how he determined when he would use the 90844 code, Respondent replied, "it depended on the * * * complexity, the diagnosis, how much potential was involved, how many interruptions I would have in my weekly schedule with phone calls or something having to do with a patient." Respondent further testified, "I knew that I was billing for 45 minutes services and I was not providing 45 minutes services." Respondent distinguished his actions from those of doctors who charge for visits that never took place.

According to Respondent, the state medical board placed his medical license on probation for one year and imposed a requirement that he receive ten hours of continuing medical education. He further testified that he needs to be able to handle controlled substances in his current position treating inmates at the local jail.

The Deputy Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. § 824(a), upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of his registration recommended by competent State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section; or

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a-7(a) of Title 42.

It is undisputed that subsection (5) of 21 U.S.C. § 824(a) provides the sole basis for the revocation of Respondent's DEA Certificate of Registration. Pursuant to 42 U.S.C. 1320a-7(a), Respondent has been excluded from participation in the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs for a five year period until approximately, mid-April 1999. The issue remaining is whether the Deputy Administrator, in exercising his discretion, should revoke or suspend Respondent's DEA Certificate of Registration.

The Government contends that Respondent is unwilling to accept full responsibility for his unlawful billing practices, that throughout the hearing Respondent attempted to justify his actions, and that therefore his DEA registration should be revoked. Respondent on the other hand does not dispute being excluded from participating in Medicare and the Illinois Medical Assistance Program, but he argues that his "lifelong professional conduct, and current professional responsibilities" weight against revoking his DEA registration.

In evaluating the circumstances of this case, Judge Bittner notes that Respondent's exclusion from participation in Medicare and the Illinois Medical Assistance Program did not result from any misuse of his authority to handle controlled substances. However as Judge Bittner correctly points out, misconduct which does not involve controlled substances may constitute grounds for the revocation of a DEA registration pursuant to 21 U.S.C. 824(a)(5). See Stanley Dubin, D.D.S., 61 FR 60,727 (1996); Nelson Ramirez-Gonzalez, M.D., 58 FR 52,787 (1993); George D. Osafo, M.D. 58 FR 37,508 (1993). Therefore, the Deputy Administrator agrees with Judge Bittner that the Government has established a prima facie case for the revocation of Respondent's DEA Certificate of Registration.

Nonetheless, Judge Bittner recommended that Respondent's registration not be revoked because she was "persuaded that Respondent has accepted responsibility for his misconduct and that is not likely to recur." The Deputy Administrator agrees with Judge Bittner, finding it significant that Respondent did not

attempt to conceal his misconduct and in fact was quite straightforward with the investigators. The Deputy Administrator disagrees with the Government that Respondent has not accepted responsibility for his actions. Respondent has never denied that he over-billed for his services, however he has attempted to explain why he did so. In addition, the Deputy Administrator finds it significant that Respondent was honest and forthcoming regarding his background with his current employer and that he need to be able to handle controlled substances in order to continue treating inmates in the local jail. Therefore, the Deputy Administrator finds that Respondent's registration should not be revoked.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AS4328274, issued to Melvin N. Seglin, M.D., be renewed and continued. This order is effective December 21, 1998.

Dated: December 8, 1998.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 98-33708 Filed 12-18-98; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration

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 Employment Standards Administration is soliciting comments concerning three information collections of the Office of Workers' Compensation Programs, Office of Longshore and Harbor

Workers' Compensation: (1) Certification of Funeral Expenses (LS-265); (2) Payment of Compensation Without Award (LS-206); and (3) Notice of Controversion of Right to Compensation (LS-207). Copies of the proposed information collection requests 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 February 22, 1999. 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: Contact Ms. Patricia Forkel at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-3201, Washington, D.C. 20210, telephone (202) 693-0339. The Fax number is (202) 219-6592. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend Longshore Act coverage to certain other employees. Section 9(a) of the Act provides that reasonable funeral expenses not to exceed \$3,000 shall be paid in all compensable death cases. Form LS-265 has been provided for use in submitting the funeral expenses for payment.

Under section 14(b) & (c) of the Longshore Act, a self-insured employer or insurance carrier is required to pay

compensation within 14 days after the employer has knowledge of the injury or death of the employee. Upon making the first payment, the employer or carrier shall immediately notify the Longshore district director of the payment. Form LS-206 has been designated as the proper form on which report of first payment is to be made.

Pursuant to Section 14(d) of the Act, if an employer controverts the right to compensation he/she shall file with the Longshore deputy commissioner in the affected compensation district on or before the fourteenth day after he has knowledge of an alleged injury or death, a notice, in accordance with a form prescribed by the Secretary of Labor, stating that the right to compensation is controverted. LS-207 is used for this purpose.

II. Current Actions

The Department of Labor (DOL) seeks extension of approval for these three information collections in order to carry out its responsibility to meet the statutory requirements to provide compensation or death benefits under the Act to workers covered under the Act.

Type of Review: Extension.
Agency: Employment Standards Administration.

Title: Certification of Funeral Expenses.

OMB Number: 1215-0027.
Agency Number: LS-265.
Affected Public: Business or other for-profit.

Total Respondents: 195.
Frequency: On occasion.
Total Responses: 195.
Average Time Per Response for Reporting: 15 minutes.
Estimated Total Burden Hours: 49.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): \$68.00.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Payment of Compensation Without Award.

OMB Number: 1215-0022.
Agency Number: LS-206.
Affected Public: Business or other for-profit.

Total Respondents: 900.
Frequency: On occasion.
Total Responses: 27,000.
Average Time Per Response: 15 minutes.
Estimated Total Burden Hours: 6,750.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): \$10,057.50.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Notice of Controversion of Right to Compensation.

OMB Number: 1215-0023.
Agency Number: LS-207.
Affected Public: Business or other for-profit.

Total Respondents: 900.
Frequency: On occasion.
Total Responses: 18,000.
Average Time Per Response: 15 minutes.

Estimated Total Burden Hours: 4,500.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): \$6,705.00.

Dated: December 15, 1998.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 98-33744 Filed 12-18-98; 8:45 am]

BILLING CODE 4510-27-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR-98-37]

Longshoring and Marine Terminals (29 CFR Parts 1910, 1917 and 1918); Information Collection Requirements

ACTION: Notice; opportunity for public comment.

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 (PRA-95) (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 impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed reinstatement of the information collection requirements contained in the standard on Longshoring and Marine Terminals (29 CFR parts 1917 and 1918). The Agency is particularly interested in comments that:

- 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.

DATES: Written comments must be submitted on or before February 19, 1999.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR-98-37, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 693-2350. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 693-1644.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3605, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693-2222. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 693-2222 or Barbara Bielaski at (202) 693-2400. For electronic copies of the information Collection Request on the Longshoring and Marine Terminals Standard, contact OSHA's WebPage on the Internet at <http://www.osha.gov> and click on "Regulations and Compliance."

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes

information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The Longshoring and Marine Terminals regulations contain requirements related to the testing, certification and marking of specific types of cargo lifting appliances and associated cargo handling gear and other cargo handling equipment such as conveyors and industrial trucks. The collections of information required from employers by OSHA are necessary to reduce employee injuries and fatalities associated with cargo lifting gear, transfer of vehicular cargo, manual cargo handling, and exposure to hazardous atmospheres.

The Agency published the Final Rule on Longshoring and Marine Terminals in the **Federal Register** on July 25, 1997 (62 FR 40142, Docket No. S-025). In conjunction with the final rule, and as required by 5 CFR 1320.8(d), OSHA solicited public comment (Docket No. ICR-97-3) on the paperwork burden estimates contained in the information collection requirements in the final rule. OSHA received no comments on these burden estimates.

However, upon a more comprehensive review and analysis of the Longshoring and Marine Terminals Standard, the Agency identified a number of additional requirements which met the definition of a collection of information and which imposes a burden on employers to generate, maintain and/or disclose information. In order to provide an opportunity for the public to participate with OSHA in identifying methods to reduce the burden on employers, OSHA is conducting a second preclearance process and is seeking comments from the public on all the information collection requirements contained in parts 1917 and 1918 (Marine Terminals and Longshoring).

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Longshoring and Marine Terminals (29 CFR parts 1917 and 1918).

OMB Number: 1218-0196.

Agency Number: Docket Number ICR-98-37.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, local or tribal Government.

Number of Respondents: 746.
Frequency: Varies (Initially, On Occasion, Monthly, Weekly, Annually).
Average Time per Response: Varies from 2 minutes (.03 hr.) to 8 hours.
Estimated Total Burden Hours: 23,161.

Total Annualized Capital/Startup Costs: \$0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection request. The comments will become a matter of public record.

Signed at Washington, DC, this 15th day of December 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98-33745 Filed 12-18-98; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-318]

Baltimore Gas and Electric Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Baltimore Gas and Electric Company (the licensee) to withdraw its March 6, 1997, application for proposed amendment to Facility Operating License No. DPR-69 for the Calvert Cliffs Nuclear Power Plant, Unit No. 2, located in Lusby, Maryland.

The proposed amendment would have revised the operating license to allow the modification of the Service Water Head Tanks.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 19, 1997 (62 FR 13171). However, by letter dated November 30, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 6, 1997, and the licensee's letter dated November 30, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

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

For the Nuclear Regulatory Commission.
Alexander W. Dromerick,
*Senior Project Manager, Project Directorate,
 Division of Reactor Projects—I/II, Office of
 Nuclear Reactor Regulation.*
 [FR Doc. 98-33715 Filed 12-18-98; 8:45 am]
 BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-289]

Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company d/b/a GPU Energy; and GPU Nuclear, Inc. (Three Mile Island Nuclear Station, Unit 1); Notice of Consideration of Approval of Transfer of Facility Operating License and Issuance of Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. DPR-50 for the Three Mile Island Nuclear Station, Unit 1 (TMI-1) currently held by Metropolitan Edison Company (Met-Ed), Jersey Central Power & Light Company (JCP&L), and Pennsylvania Electric Company (Penelec), as owners of TMI-1, and GPU Nuclear, Inc., (GPUN), as the licensed operator of TMI-1. The transfer would be to AmerGen Energy Company, LLC (AmerGen). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

Under the proposed transfer, AmerGen would be authorized to possess, use, and operate TMI-1 under essentially the same conditions and authorizations included in the existing license. In addition, no physical changes will be made to the TMI-1 facility as a result of the proposed transfer, and there will be no significant changes in the day-to-day operations of TMI-1.

Pursuant to 10 CFR 50.80, no License, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable

provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By January 11, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon David R. Lewis, counsel for GPUN, at Shaw Pittman Potts & Trowbridge, 2300 N Street, NW.,

Washington, DC 20037-1128 (tel: 202-663-8474; fax: 202-663-8007; e-mail: david_lewis@shawpittman.com) and Kevin P. Gallen, counsel for AmerGen, at Morgan, Lewis & Bockius LLP, 1800 M Street, NW., Washington, DC 20036-5869 (tel: 202-467-7462; fax: 202-467-7176; e-mail: gall7462@mlb.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by January 20, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 3, 1998, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Law/Government Publications Section, State Library of Pennsylvania (REGIONAL DEPOSITORY), Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

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

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

*Director, Project Directorate I-3, Division of
 Reactor Projects—I/II, Office of Nuclear
 Reactor Regulation.*

[FR Doc. 98-33716 Filed 12-18-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-220]

Niagara Mohawk Power Corporation, (Nine Mile Point Nuclear Station, Unit No. 1); Exemption**I**

Niagara Mohawk Power Corporation (the licensee) is the holder of Facility Operating License No. DPR-63, which authorizes operation of the Nine Mile Point Nuclear Station, Unit No. 1 (NMP1). The license provides that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the NRC or Commission) now or hereafter in effect.

The facility consists of two boiling-water reactors at the licensee's site located in Oswego County, New York. This exemption applies only to NMP1.

II

The Code of Federal Regulations, 10 CFR 70.24, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsection (a)(1) and (a)(2) of 10 CFR 70.24 specifies 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 special nuclear material is handled, used, or stored and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that 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 special nuclear material 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 it 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. Paragraph (a) of 10 CFR 70.14 states that the Commission may, upon application of any interested person or upon its own initiative, grant such exemption from 10 CFR part 70 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

III

The special nuclear material that could be assembled into a critical mass at NMP1 is in the form of nuclear fuel, the quantity of special nuclear material other than fuel that is stored on site is small enough to preclude achieving a critical mass. The NRC staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at NMP1 and has determined that such an accident cannot occur if the licensee meets the following seven criteria.

1. Plant procedures do not permit more than 3 new assemblies to be in transit between the associated shipping cask and dry storage rack at one time.
2. The k-effective of the fresh fuel storage racks filled with fuel of the maximum permissible Uranium (U)-235 enrichment and flooded with pure water does not exceed 0.95 at a 95% probability with a 95% confidence level.
3. If optimum moderation of fuel in the fresh fuel storage racks occurs when the fresh fuel storage racks are not flooded, the k-effective corresponding to this optimum moderation does not exceed 0.98 at a 95% probability with a 95% confidence level.
4. The k-effective does not exceed 0.95 at a 95% probability with a 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.
5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.

6. Radiation monitors, as required by General Design Criterion (GDC) 63 of Appendix A to 10 CFR part 50, are

provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U-235 enrichment is limited to 5 weight percent.

By letter dated November 6, 1998, the licensee requested an exemption from 10 CFR 70.24. In this exemption request, the licensee addressed the seven criteria given above and indicated how each criterion is satisfied at NMP1. The licensee stated that it does not analyze for the optimum moderation condition as addressed in Criterion 3 above, but has used a standard industry practice by implementing administrative and physical controls in accordance with General Electric's Service Information Letter 152, "Criticality Margins for the Storage of New Fuel," dated March 31, 1976. To preclude the existence of an optimum moderation condition in the new fuel vault area, the licensee uses the following controls or design features: the new fuel vault is equipped with a drain to prevent flooding; the pre-fire plans will be revised before any more new fuel is received to ensure that fire fighting foam or water will not be directed towards the new fuel vault during dry storage of new fuel; and only one new fuel vault (non-combustible) cover is removed at a time and, if the vault is left unattended, either the new fuel vault cover will be reinstalled or a solid fireproof cover installed. The NRC staff has found these practices and features acceptable.

Regarding Criterion 4 above, the licensee states that there are two types of spent fuel storage racks in the NMP1 spent fuel storage pool—those of the poison type incorporating a neutron absorbing material and those of a non-poison type without special neutron absorbers. Both types are designed to maintain k-effective less than or equal to 0.95 under all storage conditions. As required by NMP1 Technical Specification (TS) 5.5, fuel assemblies stored in the spent fuel storage locations of the non-poison flux trap design are limited to 3.0 weight percent of U-235 per axial centimeters of assembly. Since all fuel assemblies used at NMP1 since the 1980's exceed 3.0 weight percent of U-235, the non-poison racks are not used for unirradiated fuel. Spent fuel storage racks of the poison type incorporating a neutron absorber are analyzed and designed consistent with Criterion 4. Thus, the NRC staff concludes that the storage of new fuel in spent fuel racks at NMP1 is consistent with Criterion 4 above.

The NRC staff has reviewed the licensee's submittal and has determined

that NMP1 meets the criteria for prevention of inadvertent criticality; therefore, the NRC staff has determined that there is no credible way in which an inadvertent criticality could occur in special nuclear materials handling or storage areas at NMP1.

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 special nuclear material, personnel would be alerted to that fact and would take appropriate action. The NRC staff has determined that there is no credible way in which such an accident could occur. The licensee has radiation monitors consistent with GDC 63 in fuel storage and handling areas. These monitors would 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 GDC 63, constitute good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

The Commission has determined that, pursuant to 10 CFR 70.14(a), 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 the licensee an exemption from the requirements of 10 CFR 70.24 for NMP1.

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 67944].

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 10th day of December 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98-33717 Filed 12-18-98; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-410]

In the Matter of Rochester Gas and Electric Corporation; (Nine Mile Point Nuclear Station Unit No. 2); Order Approving Application Regarding Restructuring of Rochester Gas and Electric Corporation by Establishment of a Holding Company Affecting License No. NPF-69, Nine Mile Point Nuclear Station, Unit No. 2

I

Rochester Gas and Electric Corporation (Applicant) is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to own and possess a 14-percent interest in Nine Mile Point Nuclear Station, Unit 2 (NMP2), under Facility Operating License No. NPF-69, issued by the Commission on July 2, 1987. In addition to Applicant, the other owners who may possess, but not operate, NMP2 are New York State Electric & Gas Corporation with an 18-percent interest, Long Island Lighting Company with an 18-percent interest, and Central Hudson Gas and Electric Corporation with a 9-percent interest. Niagara Mohawk Power Corporation (NMPC) owns a 41-percent interest in NMP2, is authorized to act as agent for the other owners, and has exclusive responsibility and control over the operation and maintenance of NMP2. NMP2 is located in the town of Scriba, Oswego County, New York.

II

Under cover of a letter dated July 31, 1998, Applicant submitted an application, which was supplemented August 18, 1998, and September 14, 1998, for consent by the Commission, pursuant to 10 CFR 50.80, regarding a proposed corporate restructuring action that would result in the indirect transfer of the operating license for NMP2 to the extent it is held by Applicant. As a result of the proposed restructuring, Applicant would establish a new holding company and become a subsidiary of the new holding company, not yet named, to be created in accordance with an "Amended and Restated Settlement Agreement" with the Public Service Commission of the State of New York, dated January October 23, 1997 (Case 96-E-0989).

According to the application, essentially all of the outstanding shares of Applicant's common stock would be exchanged on a share-for-share basis for common stock of the proposed new holding company, such that the holding company would own the outstanding

common stock of Applicant. Under the proposed restructuring, Applicant would continue to be an "electric utility" as defined in 10 CFR 50.2, providing the same utility services as it did before the restructuring. In addition, certain non-utility unregulated subsidiaries of Applicant would become subsidiaries of the new holding company. Applicant would retain its ownership interest in NMP2 and would continue to be a licensee. No direct transfer of the operating license or interests in the station would result from the proposed restructuring. The transaction would not involve any change to either the management organization or technical personnel of NMPC, which has exclusive responsibility under the operating license for operating and maintaining NMP2 and which is not involved in the proposed restructuring of Applicant.

Notice of the application for approval was published in the **Federal Register** on October 26, 1998 (63 FR 57141), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on October 26, 1998 (63 FR 57143).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application of July 31, 1998, as supplemented by letters dated August 18, and September 14, 1998, and attachments thereto, the NRC staff has determined that the proposed restructuring of Applicant by establishment of a holding company will not affect the qualifications of Applicant as a holder of the license, and that the transfer of control of the license for NMP2, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated December 14, 1998.

III

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the Commission approves the application regarding the proposed restructuring of Applicant by the establishment of a holding company, subject to the following: (1) Applicant shall provide the Director, Office of Nuclear Reactor Regulation, a copy of any application, at the time it is filed,

to transfer (excluding grants of security interests or liens) from Applicant to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of Applicant's consolidated net utility plant, as recorded on Applicant's books of account, and (2) should the restructuring of Applicant not be completed by December 14, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV

By January 11, 1999, any person whose interest may be affected by this Order may file in accordance with the Commission's rules of practice set forth in Subpart M of 10 CFR part 2, a request for a hearing and petition for leave to intervene with respect to issuance of the Order.

Such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2). Requests for a hearing and petitions for leave to intervene should be served upon Dr. Robert C. Mecredy, Vice President, Nuclear Operations, Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this Order, see the application for approval dated July 31, 1998, as supplemented by letters dated August 18, 1998, and September 14, 1998, and attachments

thereto, and the Safety Evaluation dated December 14, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126 and the Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 14th day of December 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98-33718 Filed 12-18-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-224]

In the Matter of Rochester Gas and Electric Corporation; (R. E. Ginna Power Plant); Order Approving Application Regarding Restructuring of Rochester Gas and Electric Corporation by Establishment of a Holding Company Affecting License No. DPR-18, R.E. Ginna Nuclear Power Plant

I

Rochester Gas and Electric Corporation (RG&E and licensee) is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to possess, maintain, and operate the R. E. Ginna Nuclear Power Plant (Ginna or the facility), under Facility Operating License No. DPR-18, issued by the Commission on December 10, 1984. RG&E fully owns Ginna. The facility is located in Wayne County, New York.

II

RG&E submitted an application dated July 31, 1998, as supplemented August 18, 1998, and September 14, 1998, for consent by the Commission, pursuant to 10 CFR 50.80, to the extent a proposed corporate restructuring action would result in the indirect transfer of the operating license for the facility. Under the proposed restructuring, RG&E would establish a new holding company and become a subsidiary of the new holding company in accordance with a Settlement Agreement reached with the New York Public Service Commission (PSC Case Nos. 96-E-0989), dated October 23, 1997. Unregulated subsidiaries of RG&E would also

become subsidiaries of the new holding company.

According to the application, essentially each share of RG&E's common stock would be exchanged for one share of common stock of the holding company such that the holding company would own the outstanding common stock of RG&E. Under this restructuring, RG&E would continue to be an "electric utility" as defined in 10 CFR 50.2 engaged in the transmission, distribution and generation of electricity. RG&E would continue to be the direct owner of Ginna and would continue to operate Ginna. No direct transfer of the operating license would result from the proposed restructuring. The transaction would not involve any change in the responsibility for nuclear operations within RG&E. Officer responsibilities at the holding company level would be primarily administrative and financial in nature and would not involve operational matters related to Ginna. No RG&E nuclear management positions would be changed as a result of the corporate restructuring.

A Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring was published in the **Federal Register** on October 26, 1998 (63 FR 57141), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on October 26, 1998 (63 FR 57143).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application of July 31, 1998, as supplemented August 18, 1998, and September 14, 1998, the NRC staff has determined that the restructuring of RG&E by establishment of a holding company will not affect the qualifications of RG&E as the holder of the license for Ginna, and that the transfer of control of the license, to the extent effected by the proposed restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated December 14, 1998.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, *It is hereby ordered* that the Commission approves the application regarding the proposed

restructuring of RG&E by the establishment of a holding company, subject to the following: (1) RG&E shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from RG&E to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of RG&E's consolidated net utility plant, as recorded on RG&E's books of account; and (2) should the restructuring of RG&E as described herein, not be completed by December 14, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV

By January 11, 1999, any person whose interest may be affected by this Order may file in accordance with the Commission's rules of practice set forth in Subpart M of 10 CFR Part 2 a request for a hearing and petition for leave to intervene with respect to issuance of the Order. Such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon Dr. Robert C. Mecredy, Vice President, Nuclear Operations, Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, New York 14649; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request of intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal**

Register and served on the parties to the hearing.

For further details with respect to this Order, see the application for approval filed by RG&E dated July 31, 1998, as supplemented by letter dated August 18, 1998, and attachments thereto, and letter dated September 14, 1998, with attachments, and the Safety Evaluation dated December 14, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126 and the Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 14th day of December 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98-33719 Filed 12-18-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-454, STN 50-455, STN 50-456, STN 50-457]

Commonwealth Edison Company; Byron and Braidwood Stations, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-37 and NPF-66, issued to Commonwealth Edison Company (ComEd, the licensee) for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois and to Facility Operating License Nos. NPF-72 and NPF-77, issued to ComEd for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend the Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2, Facility Operating Licenses (FOLs) and revise the Technical Specifications (TSs) to be consistent with the Improved Standard Technical Specifications (ITS) conveyed by NUREG-1431, "Standard Technical Specifications for Westinghouse Plants," Revision 1 (April 1995).

The proposed action is in accordance with the licensee's application for amendments dated December 13, 1996, as supplemented by letters dated February 24, September 2, October 10, October 28 and December 8, 1997, and January 27, January 29, February 6, February 13, February 24, February 26, April 13, April 16, June 1, June 2, July 2, July 8, July 30, July 31, August 11, August 12, September 21, September 25, October 1, October 2, October 5, October 15, October 23, November 6, November 19, November 23, November 30, and December 14, 1998.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of the TSs. The Commission's "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors" (52 FR 3788, February 6, 1987) and later the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors" (58 FR 39132, July 22, 1993) documented this need. To facilitate the development of individual improved TSs, each reactor vendor owners' group (OG) and the NRC staff developed standard TS (STS). For Westinghouse plants, the STS are contained in NUREG-1431, and this document was the basis for the new Byron and Braidwood, Units 1 and 2, TSs. The NRC Committee to Review Generic Requirements reviewed the STS and made note of the safety merits of the STS and indicated its support of conversion to the STS by operating plants.

Description of the Proposed Change

The proposed revision to the TSs is based on NUREG-1431 and on guidance provided in the 1993 Final Policy Statement. ComEd's objective was to completely rewrite, reformat, and streamline the existing TSs at the Byron and Braidwood Stations. Emphasis was placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG-1431, portions of the existing TSs were also used as the basis for the ITS. Plant-specific issues (unique design features, requirements and operating practices) were discussed at length with ComEd, and generic matters with the OG.

The proposed changes from the existing TSs can be grouped into four general categories, as follows:

1. Nontechnical (administrative) changes that were intended to make the

ITS easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformatting of requirements without affecting technical content. Every section of the Byron and Braidwood TSs has undergone these types of changes. In order to ensure consistency, the NRC staff and ComEd have used NUREG-1431 as guidance to reformat and make other administrative changes.

2. Relocated requirements, including items that were in the existing Byron and Braidwood TSs. Pursuant to the criteria of 10 CFR 50.36, the TSs that are being relocated to licensee-controlled documents are not required to be in the TSs. The bases of the four criteria of 10 CFR 50.36 are discussed in the Commission's Final Policy Statement. The relocated requirements are not needed to obviate the possibility that an abnormal situation or event will give rise to an immediate threat to public health and safety. The NRC staff has concluded that appropriate controls have been established for all of the current specifications, information and requirements that are being moved to licensee-controlled documents. In general, the proposed relocation of items in the Byron and Braidwood TSs to the Updated Final Safety Analysis Report, appropriate plant-specific programs, procedures and ITS Bases follows the guidance of NUREG-1431. Once these items have been relocated by removing them from the TSs to licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms that provide appropriate procedural means to control changes.

3. More restrictive requirements that consist of proposed Byron and Braidwood ITS items that are either more conservative than corresponding requirements in the current Byron and Braidwood TSs, or are additional restrictions that are not in the existing Byron and Braidwood TSs, but are contained in NUREG-1431. Examples of more restrictive requirements include: placing a limiting condition for operation on plant equipment that is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

4. Less restrictive requirements that are relaxations of corresponding requirements in the existing Byron and Braidwood TSs, that provide little or no safety benefit and place unnecessary burdens on the licensee. These relaxations were the result of generic

NRC actions or other analyses, and have been justified on a case-by-case basis for Byron and Braidwood. These relaxations will be described in the staff's Safety Evaluation, to be issued when the review of the proposed license amendments is completed.

In addition to the changes previously described, the licensee proposed certain changes to the existing TSs that deviated from the STS in NUREG-1431. These additional proposed changes are described in the licensee's application and in the staff's Notices of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing (October 28, 1998 (63 FR 57710) and November 2, 1998 (63 FR 58794)). Where these changes represent a change to the current licensing basis for Byron and Braidwood, they have been justified by ComEd on a case-by-case basis, and will be described in the staff's Safety Evaluation.

Environmental Impacts of the Proposed

The Commission has completed its environmental evaluation of the proposed action and concludes that the proposed TS conversion would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed

action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on December 15, 1998, the staff consulted with the Illinois State official, Mr. Frank Niziolek, of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 13, 1996, as supplemented by letters dated February 24, September 2, October 10, October 28 and December 8, 1997, and January 27, January 29, February 6, February 13, February 24, February 26, April 13, April 16, June 1, June 2, July 2, July 8, July 30, July 31, August 11, August 12, September 21, September 25, October 1, October 2, October 5, October 15, October 23, November 6, November 19, November 23, November 30, and December 14, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at: for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

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

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Director, Project Directorate III-2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98-33720 Filed 12-18-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Meeting of the Subcommittees on Plant Operations and on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Plant Operations and on Reliability and Probabilistic Risk Assessment will hold a joint meeting on January 26, 1999, in 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.

Tuesday, January 26, 1999—8:30 a.m. Until the Conclusion of Business

The Subcommittees will continue their review of proposed improvements to the NRC inspection and assessment programs, including initiatives related to development of a risk-based inspection program and performance indicators. 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 Subcommittees, their 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 Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and 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: December 14, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98-33714 Filed 12-18-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Wednesday, December 23, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Wednesday, December 23

9:00 AM Affirmation Session (PUBLIC MEETING)

a: Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-317-LR, 50-318-LR, Order Denying Intervention Petition/Hearing Request And Dismissing Proceeding, (Tentative) (Contact: Ken Hart, 301-415-1659)

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415-1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415-1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

<http://www.nrc.gov/SECY/smij/schedule.htm>

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: December 16, 1998.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98-33821 Filed 12-17-98; 11:42 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel Meeting; Yucca Mountain Repository

Panel Meeting: January 25, 1999—Las Vegas, Nevada: Department of Energy's (DOE) selection of a Yucca Mountain repository design to be used as part of a license application to the Nuclear Regulatory Commission for the construction of a potential repository at Yucca Mountain.

Pursuant to its authority under section 5051 of Pub. L. 100-203, Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board (Board) will hold a panel meeting on Monday, January 25, 1999 in Las Vegas, Nevada. The meeting, which is open to the public, will begin at 8:00 a.m. at the Alexis Park Hotel, 375 East Harmon, Las Vegas, Nevada 89109; (Tel) 702 796-3300, 800 453-8000, (Fax) 702 796-0766.

The meeting will focus on the process for selecting license application designs (LADS). The DOE developed LADS as a basis for the selection of a preferred repository design for the potential site at Yucca Mountain, Nevada. In the morning, the Board's panel will review the LASD selection process, selection criteria, and the identification and evaluation of design alternatives and features. In the afternoon, the Panel will review the selected design alternatives, the basis for their selection, and the process and schedule leading to the identification of a single preferred repository design. A detailed agenda will be available approximately one week before the meeting. You can either call for a copy, or visit the Board's web site at www.nwtrb.gov.

Transcripts of this meeting will be available via e-mail, on computer disk, or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning on February 23, 1999. For further information, contact the NWTRB, Paula Alford, External Affairs, 2300 Clarendon Boulevard, Suite 1300, Arlington, Virginia 22201-3367; (tel) 703-235-4473; (fax) 703-235-4495; (e-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program for managing the disposal of the nation's commercial spent nuclear fuel and defense high-level waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential

location for a permanent repository for disposing of that waste.

Dated: December 16, 1998.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 98-33713 Filed 12-18-98; 8:45 am]

BILLING CODE 6820-AM-M

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Sequestration Final Report

AGENCY: Office of Management and Budget—Budget Analysis Branch.

ACTION: Notice of Transmittal of Final Sequestration Report to the President and Congress.

SUMMARY: Pursuant to Section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Final Sequestration Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Jason Orlando, Budget Analysis Branch—202/395-7436.

Dated: December 11, 1998.

Clarence C. Crawford,

Associate Director for Administration.

[FR Doc. 98-33678 Filed 12-18-98; 8:45 am]

BILLING CODE 3110-01-P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Medco Research, Inc., Common Stock, \$.001 Par Value; Common Stock Purchase Rights) File No. 1-9771

December 14, 1998.

Medco Research, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities of the Company have been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8-A which became effective on December 2, 1998, on the New York Stock Exchange, Inc. ("NYSE"). Trading of the Company's Securities on the NYSE commenced at the opening of business on December 2, 1998, and concurrently therewith the stock was suspended from trading on the Amex.

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Securities from listing on the Amex, the Company considered the avoidance of listing on dual markets.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the Amex.

This application relates solely to the withdrawal from listing of the Company's Securities from the Amex and shall have no effect upon the continued listing of the Securities on the NYSE.

By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before January 6, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98-33664 Filed 12-18-98; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 2945]

Renewal of the Shipping Coordinating Committee

The Department of State is renewing the Shipping Coordinating Committee to solicit the view of interested members of the public and government agencies on maritime policy issues, for the guidance of U.S. delegations to international meetings on these matters. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

Membership includes representatives from the maritime industry, labor unions, environmental groups and government bureaus and agencies. The Committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d), 5 U.S.C.

Any questions concerning this committee should be referred to the Executive Secretary, Stephen M. Miller at (202) 647-5840.

Dated: December 8, 1998.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 98-33659 Filed 12-18-98; 8:45 am]

BILLING CODE 4710-09-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Transportation Equity Act for the 21st Century; Interim Guidance on Conformity With the National Intelligent Transportation Systems (ITS) Architecture and Standards

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This document publishes interim implementation guidance on section 5206(e) of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107, for conformity with the national intelligent transportation systems (ITS) architecture and standards. Included with the interim guidance is a recommended approach to assist in meeting the legislative intent. Following publication of this notice, both the FHWA and the FTA plan to develop a

final policy through the formal rulemaking procedures. The interim guidance was issued to the FHWA and the FTA region and division offices on October 2, 1998.

FOR FURTHER INFORMATION CONTACT: *For technical information:* Ms. Shelley Row, (202) 366-8028, or Mr. Mac Lister, (202) 366-2128, ITS Joint Program Office, FHWA, Mr. Bob Rupert, Office of Traffic Operations and ITS Applications, FHWA; and Mr. Ron Boenau, (202) 366-0195, Advanced Public Transportation Systems, FTA. *For legal information:* Ms. Jodi George, Office of the Chief Counsel (HCC-32), (202) 366-1346, FHWA; and Ms. Nancy Zaczek, Office of the Chief Counsel (TCC-10), (202) 366-4011, FTA. All are located at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of the document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>. The interim guidance may also be accessed at the U.S. DOT's ITS home page at <http://www.its.dot.gov>.

Background

Section 5206(e) of the TEA-21 requires that ITS projects using funds from the Highway Trust Fund (including the Mass Transit Account) conform to the national ITS architecture, applicable standards and protocols. To begin the process of implementing this legislative requirement, the U.S. DOT has developed interim guidance (which includes sections on definitions, questions and answers, and statutory language).

The intent of the interim guidance is to:

1. Foster integration of ITS,
2. Encourage the incorporation of ITS into the transportation planning process, and
3. Focus on near-term ITS projects with the greatest potential for affecting regional integration.

The interim guidance is effective as of October 2, 1998, and will be in effect for approximately one year while a final policy is developed through the formal

rulemaking process. Interim guidance is the first step of a phased approach for implementing the TEA-21 conformity provision.

The interim guidance published in this **Federal Register** is provided for informational purposes on our recommended approach to implementing the requirements for conformity to the national ITS architecture and standards. Specific questions on any of the material published in this notice should be directed to the appropriate contact person named in the caption **FOR FURTHER INFORMATION CONTACT**.

(Authority: 23 U.S.C.; sec. 5206(e), Pub. L. 105-178, 112 Stat. 457 (1998); 49 CFR 1.48 and 1.51)

Issued on: December 14, 1998.

Kenneth R. Wykle,

Federal Highway Administration.

Gordon J. Linton,

Federal Transit Administration.

The text of the FHWA and the FTA interim guidance on conformity with the national ITS architecture and standards, as well as the memo that was distributed with the interim guidance, are presented as follows:

Interim Guidance on Conformity With the National ITS Architecture and Standards

Information: Interim Guidance on Conformity with the National ITS Architecture and Standards
Federal Highway Administrator HVH-1
Federal Transit Administrator
FHWA Division Administrators
FTA Regional Administrators
FHWA/OMC State Directors

Section 5206(e) of the Transportation Equity Act for the 21st Century (TEA-21) requires that Intelligent Transportation Systems (ITS) projects using funds from the Highway Trust Fund (including the Mass Transit Account) conform to the National ITS Architecture and standards. To begin the process of implementing this legislative requirement, the U.S. Department of Transportation (DOT) has developed the attached Interim Guidance (which includes sections on definitions, questions and answers, and statutory language).

The Interim Guidance reflects input received from Federal, State, local, and private sector transportation stakeholders in conjunction with national transportation association forums and 10 outreach sessions held across the Nation this spring. The intent of the Interim Guidance is to:

1. Foster integration,

2. Encourage the incorporation of ITS into the transportation planning process, and

3. Focus on near-term ITS projects with the greatest potential for affecting regional integration.

The Interim Guidance is effective immediately, and is expected to be in effect for approximately 1 year. During this period, it is anticipated that a final policy will be developed through formal rulemaking. Therefore, Interim Guidance is the first step of a phased approach for implementing the TEA-21 conformity provision.

To support U.S. DOT field staff with implementation of the Interim Guidance, a Resource Guide has been prepared that includes the Interim Guidance, background material on the National ITS Architecture and Standards, benefits of using the National ITS Architecture, ITS and Commercial Vehicle Operations, and additional supplemental information. The Resource Guide will be distributed to members of your staff. In addition, the Department's ITS website serves as a helpful source of current/recently published information: www.its.dot.gov.

Interim Guidance

Consistent with the integration goals supported by the National ITS Architecture, as you begin the process of implementing the Interim Guidance, careful consideration of potential Y2K (Year 2000) computer problems should be a crucial part of your efforts. As you know, intelligent, integrated transportation systems, like most computer-based systems, are susceptible to Y2K computer problems. Additional information on Y2K issues specific to ITS can be found at the following website: www.fhwa.dot.gov/y2k.

Implementation of the Interim Guidance is an important step toward regional ITS integration. Your comments and experiences in applying the Interim Guidance will help to shape the final policy. Your efforts in support of implementing this Interim Guidance are appreciated.

Signed by Gordon J. Linton and Kenneth R. Wykle.

I. Introduction

The Transportation Equity Act for the 21st Century (TEA-21) contains a provision requiring Intelligent Transportation System (ITS) projects implemented with funds from the Highway Trust Fund (including the Mass Transit Account) to conform to the national architecture [National ITS Architecture], applicable or provisional standards, and protocols. This

document provides Interim Guidance for meeting this section of the law (Section 5206(e)—Conformity with National Architecture). Included with the Interim Guidance is a recommended approach to assist in meeting the legislative intent.

II. Background and Goals

Section 5206 of the legislation aims to accelerate the integrated deployment of ITS in metropolitan and rural areas and in commercial vehicle operations through the use of the National ITS Architecture or locally developed regional architectures. The legislation also aims to facilitate interoperability through the use of standards and protocols. The National ITS Architecture is a tool to help agencies identify and plan for the many functions and information sharing opportunities which may be desired.

The greatest benefit from ITS accrues when ITS projects are planned and designed within a broad regional context that supports the operation and management of the transportation system. Additionally, the development and use of a regional ITS architecture to guide the integration of ITS projects and programs and enable information sharing among stakeholders within an area is good, sound practice. Due to the variety of ITS services and stakeholders, a "region" can be defined as metropolitan, statewide, multi-state, and, for some applications, national. Implementation of this legislative provision will foster sound ITS systems planning and design practices to achieve the following goals:

1. Involve and unite a wide range of stakeholders in planning for ITS,
2. Support flexibility in tailoring ITS deployment and operations to local requirements,
3. Achieve integration of ITS systems and components,
4. Enable information sharing among stakeholders,
5. Facilitate future ITS expansion in a cost-effective way, and
6. Provide for future interoperability of key ITS services at a national level.

The achievement of these goals will ultimately be manifested in five ways:

1. The consideration of transportation system operations and management will be integrated into the transportation planning process and reflected in regional transportation goals and objectives.
2. ITS strategies that effectively address regional goals and objectives will be considered and prioritized within regional planning efforts to promote efficient system management and operation. The development of a

regional ITS architecture will complement this framework.

3. ITS projects will provide for all applicable information sharing opportunities.

4. ITS projects will use open standards and protocols in support of interoperability.

5. The National ITS Architecture will be used as a tool in regional architecture development and project design, as appropriate.

III. Applicability and Exceptions

The processes and practices being promoted in this document are sound practices for any project; however, listed below are the factors that affect whether or not this Interim Guidance should be followed:

Type of Project

For the purposes of the Interim Guidance, projects are classified into four categories:

1. Projects without ITS,
 2. ITS projects that affect regional integration,
 3. ITS/Commercial Vehicle Operations (CVO) projects, and
 4. Other ITS projects.
- Categories (2), (3), and (4) are all considered to be ITS projects. ITS projects include both stand-alone ITS projects and projects that contain ITS elements. (See Appendix A for definitions). The Interim Guidance applies to all ITS projects, with particular attention to those ITS projects that affect regional integration. In the case of category (3), ITS/CVO projects, the Interim Guidance references other procedures that have been developed to support Commercial Vehicle Information Systems and Networks (CVISN) deployment. The Interim Guidance does not apply to category (1), projects without ITS.

Funding Source

All ITS projects receiving funding in whole or in part from the Highway Trust Fund are subject to the Interim Guidance.

Stage of Development

As of the date of issuance of the Interim Guidance, all ITS projects that are under construction or projects for which final design is complete are exempt from this Interim Guidance.

Legislative Exceptions

TEA-21 allows the Secretary to authorize exceptions to the conformity requirement for projects designed to achieve specific research objectives [as defined in Section 5206(e)(2)(A)] and for projects to upgrade or expand an ITS in

existence as of the date TEA-21 was enacted. Only those projects meeting three specific criteria are eligible for exception as an upgrade or expansion. These criteria [as defined in Section 5206(e)(2)(B)] are that the project:

- (i) Would not adversely affect the goals or purposes of this subtitle [Intelligent Transportation Act of 1998 (ITS Act), secs. 5201-5213, Pub. L. 105-178, 112 Stat. 107, 452];
- (ii) Is carried out before the end of the useful life of such system; and
- (iii) Is cost-effective as compared to alternatives that would meet the conformity requirement.

TEA-21 also includes a general exception on funds used for the operation or maintenance of an ITS in existence on the date TEA-21 was enacted. A copy of the ITS Act goals, purposes, and exception language is provided in Appendix C.

Meeting the intent of the TEA-21 conformity language (and this Interim Guidance) does not in any way require replacements or retrofitting of existing systems. Logically planned enhancements take existing (or legacy) systems into account. Because one of the purposes of the ITS Act is to improve regional cooperation and operations planning, ITS projects that affect regional integration would generally not satisfy exception criteria (i) above. If an exception is granted, documentation of the determination and rationale should be kept in the project files.

IV. Interim Guidance

For the period of this Interim Guidance, to ensure conformity with the National ITS Architecture and applicable standards, the following applies:

A. ITS Projects

1. Recipients of funds from the Highway Trust Fund for ITS projects that affect regional integration shall evaluate those projects for institutional and technical integration with transportation systems and services within the region, and consistency with the applicable regional ITS architecture or the National ITS Architecture. Based upon this evaluation of the project(s), Highway Trust Fund recipients shall take the appropriate actions to ensure that development of the project(s): (a) engages a wide range of stakeholders, (b) enables the appropriate electronic information sharing between stakeholders, (c) facilitates future ITS expansion, and (d) considers the use of applicable ITS standards.

2. Recipients of funds from the Highway Trust Fund for ITS/CVO

projects should follow the ITS/CVO Conformance Assurance Process Description to guide development of the project(s). These procedures are provided in the National ITS Architecture and Standards Resource Guide. Projects having a CVO technology component, but not meeting the definition of an ITS/CVO Project, should be treated as either ITS projects that affect regional integration or other ITS projects for the purposes of this Interim Guidance, and are subject to (IV.A.1) above or (IV.A.3) below.

3. Recipients of funds from the Highway Trust Fund for other ITS projects (not deemed to affect regional integration and not defined as ITS/CVO projects) should consider the same evaluation and actions described in (IV.A.1) above.

B. ITS Considerations in Transportation Planning

Statewide and metropolitan planning activities should include consideration of the efficient management and operation of the transportation system. This should include the regional implementation and integration of ITS services and development of a regional ITS architecture(s), as appropriate. Regional consideration of ITS should address (a) the integration of ITS systems and components, (b) inclusion of a wide range of stakeholders, (c) flexibility in tailoring ITS deployment and operations to local needs, (d) electronic information sharing between stakeholders, and (e) future ITS expansion.

The Interim Guidance is anticipated to be in effect for approximately one year. The Interim Guidance is the first step in a phased approach for implementing the TEA-21 conformity provision. The final implementing policy may contain additional requirements.

V. Recommended Approach

An approach for meeting the Interim Guidance (given in section IV) is suggested below.

A. Immediate Actions

1. Agencies should cooperatively work with FHWA Division (Federal Aid and Office of Motor Carriers) and/or FTA Region staff and other local agencies, including the applicable Metropolitan Planning Organization (MPO) or planning agency, to categorize projects receiving funding through the Highway Trust Fund into four categories: (1) projects without ITS, (2) ITS projects that affect regional integration, (3) ITS/CVO projects, and (4) other ITS projects. These categories

will help to determine the projects for which the Interim Guidance applies. As a minimum, this action applies to all projects included in transportation plans, Statewide Transportation Improvement Programs (STIPs), Transportation Improvement Programs (TIPs), Commercial Vehicle Safety Plans (CVSPs), projects in design, and other projects that are under consideration. If an overall categorization is not carried out, then determination should be made on a case-by-case basis by recipient agencies and Federal field staff.

2. In consultation with FHWA Division and/or FTA Region field staff and the applicable MPO or planning agency, agencies should determine if a regional ITS architecture exists within which individual ITS projects and programs should fit (at a metropolitan, statewide, corridor, or multi-state level). The regional ITS architecture should be defined at the subsystem and information (architecture) flow level, showing the type of information exchanges planned between specific agencies.

B. ITS Projects

The suggested approach for meeting the Interim Guidance on ITS Projects is provided below for the different categories of ITS projects. It is suggested that these steps be accomplished early in the planning and/or design process, as there will be greater ease in making modifications in the scoping and early design stages.

For ITS Projects That Affect Regional Integration and Other ITS Projects

The suggested approach provided below (or an alternative approach that meets the intent of the Interim Guidance) should be applied to ITS projects that affect regional integration. The same approach is also recommended for other ITS projects, to a degree that is appropriate to the local situation, integration needs, and the type of project being implemented. The approach is tailored to accommodate areas both with and without a regional ITS architecture.

1A. For areas with a regional ITS architecture:

Scope the project to be consistent with the regional ITS architecture. If the project is under design, determine if that project fits within (is addressed by) the regional ITS architecture. If the project does not fit within the regional ITS architecture, consider whether the regional ITS architecture needs revision or whether the project scope/design needs modification.

1B. For areas without a regional ITS architecture:

Determine the applicable portions of the National ITS Architecture within which the project generally fits. As closely as possible, define the project using the subsystems and information (architecture) flows from the National ITS Architecture.

2. Early in project design (and periodically throughout the design process), the following considerations should be addressed:

a. Include all relevant agencies/stakeholders (including agencies responsible for transportation operations and appropriate planning agencies) in the project design process and ensure their continuing participation.

b. Ensure that all applicable subsystems and information (architecture) flows from the regional ITS architecture [or from the National ITS Architecture, for areas without a regional ITS architecture] have been considered in the project design. If not, consider modifications. It may be helpful to include, in the design documentation, listings or illustrations of the subsystems and information flows that are being provided by the project, and any relevant supporting discussion that indicates why information flows suggested by the regional ITS architecture [or from step 1B, for areas without a regional ITS architecture] may not have been included.

c. Consider incorporating additional information flows, as appropriate to the situation, in anticipation of future needs.

d. Ensure that relevant technology and operating agreements are reached between the affected parties.

e. Ensure that future expansion and information sharing opportunities are kept open through the project design strategy.

3. Identify any applicable standards and protocols that are appropriate for the project. Consider incorporating them into the project design and specifications. Wherever feasible, open systems should be considered in lieu of systems with proprietary interfaces. It may be helpful to clearly identify, in the design documentation and specifications, the standards which are being used in the project.

Even if a regional ITS architecture exists, the National ITS Architecture can be used as a valuable resource for many of the above steps (e.g., for consideration of additional information flows, item 2c).

For ITS/CVO Projects

1. Review the ITS/CVO Architecture Utilization Policy and, at a minimum, the following two related documents:

the ITS/CVO Conformance Assurance Process Description and the Interoperability Testing Strategy. All three documents are included in the National ITS Architecture and Standards Resource Guide.

2. Follow the recommendations in the ITS/CVO Conformance Assurance Process Description:

- a. Assess commitment to the architecture and operational concepts,
- b. Assess project and work plans, reviews, and top-level design,
- c. Assess detailed design, and
- d. Assess implemented systems through interoperability testing.

The Conformance Assurance Process Description defines evaluation criteria for ITS/CVO architectural conformity, and establishes a mechanism for fostering conformance in a deployment or implementation. Each ITS/CVO project should have a plan which includes an incremental checkpoint system for assessing architecture conformance. At each checkpoint, documents should be reviewed against architecture criteria and issues and potential interoperability problems identified. If problems are discovered, remedial actions should be developed and implemented to resolve the problems. Progress toward resolution should be tracked, and action assignments/resolutions should be documented to serve as a monitoring and lessons learned tool for future CVO deployments.

3. Use the standards recommended for ITS/CVO to facilitate interoperability.

C. ITS Considerations in Transportation Planning

The activities within the suggested approach given below are intended to encourage sound consideration of the operations and management of the transportation system, including the development of a regional ITS architecture and related efforts to advance ITS in a region.

It should be noted that what constitutes a region is locally determined based on the needs for sharing information and coordinating operational strategies. For a metropolitan region, it is recommended that the size of a region not be smaller than a metropolitan planning area boundary. For ITS/CVO projects, it is recommended that the size of the region not be smaller than a State, with consideration for multi-state, national, and international applications. The size of the region should promote integration of transportation systems by fostering the exchange of information on operating conditions across a number of agencies and jurisdictions. Likewise, the

determination of the leadership or "champion" role in carrying out these planning activities is a local decision.

Engage a Broad Range of Stakeholders

An open and inclusive process for engaging a broad range of transportation stakeholders in developing ITS activities is key to achieving integration and information sharing. As appropriate, stakeholders should include but are not limited to the following: State transportation agencies, transit providers, metropolitan planning organizations, local (city/county) transportation agencies, police departments, fire departments, emergency medical services, toll authorities, traveler information providers, the media, telecommunications providers, other private transportation providers, port authorities, airport authorities, commercial trucking associations, freight railroad associations, motor carrier regulatory or enforcement agencies, non-governmental organizations, and the general public.

Identify Needs That Can be Addressed by ITS

The transportation problems and needs that can potentially be addressed through operations and management strategies should be identified. These needs should be developed in the context of the needs, goals, and objectives already developed as part of the applicable transportation planning process. Participants should discuss opportunities for using ITS applications as part of the overall mix of strategies to meet identified needs and goals.

Describe Existing and Planned ITS Enhancements

A sound understanding of current and committed ITS projects, operational agreements, and information sharing arrangements is needed before future plans for ITS developments are discussed. Participants should (1) identify existing ITS components and integration and (2) then develop a list of planned ITS enhancements that will address identified needs and improve the operations and management of the transportation system. The existing situation and planned ITS enhancements should be described in terms of the physical system description and the extent of information sharing. Metropolitan ITS and CVISN Deployment Tracking Surveys and indicators provide a useful starting point and approach for describing existing and planned ITS enhancements.

Define a Regional ITS Architecture

Given the existing and planned ITS enhancements, identified needs, and using the National ITS Architecture as a tool, a regional ITS architecture can be developed to serve as a high-level template for ITS project development and design. The regional ITS architecture should include subsystems and information flows relevant to the area. The regional ITS architecture should be periodically revisited and updated to reflect ongoing discussions and improvements. An existing regional ITS architecture should be assessed to ensure that it provides an appropriate level of detail.

Define Operating Requirements

Implementation of the planned ITS enhancements and information sharing arrangements requires further definition of the operational agreements between the various agencies and jurisdictions. An operating concept should be established that identifies the general roles and responsibilities of the stakeholders in the development and day-to-day operation of the system. This includes establishing requirements or agreements on information sharing and traffic device control responsibilities and authority (e.g., deciding if back-up control capability is desired given a loss of power or failure condition). These decisions will be factored into the regional ITS architecture and will also flow-down through ITS projects as they are phased in. Because many ITS services and strategies involve communication and coordination, this step should not be overlooked.

Coordinate With Planned Improvements

As agencies begin to determine ITS projects that can be implemented in the near to mid-term time frame, potential opportunities should be explored for leveraging activities with planned capital projects such as facility reconstruction, capacity expansion, or new bus purchases. These projects are likely already contained in Transportation Improvement Programs (TIPs), Statewide Transportation Improvement Programs (STIPs), Commercial Vehicle Safety Plans (CVSPs), applicable transportation plans, or specific agency plans. An example of this coordination would be adding the ITS communications and surveillance infrastructure (or other components) at the same time as a reconstruction project, resulting in overall cost savings and minimized traffic disruption compared to adding

the ITS infrastructure after the reconstruction project was completed.

Develop Phasing Schedule

The phasing of ITS projects and strategies into the regional transportation system and planning process will need to be considered. Phasing considerations include anticipated time frame for implementation, geographic context (both within and between jurisdictions), functional capabilities, and funding considerations. Geographic considerations involve decisions such as the initial and future system coverage area, which jurisdictions in the region will be upgraded first, which transit agencies in the region will participate in the electronic fare media project, etc. Functional considerations include deciding which basic functions of a system should be implemented first and which should be deferred. The phasing considerations and decisions made in the initial stages may be conceptual, with flexibility for changes and further definition during future project development and design.

Develop Regional Technology Agreements

As potential ITS actions are advanced, it may become necessary for stakeholders to reach agreement on some technologies, standards, or deployment choices that have regional significance. This particularly applies to the near-term projects that have been identified. For example, regional choices on technologies or standards may be required for the telecommunications infrastructure, electronic toll tags, signal controllers and interfaces, electronic fare media, and specialized mobile radio systems. For ITS/CVO projects, public and private stakeholders need to reach agreement on hardware, software, operational, and programmatic requirements for interoperability to exist in multi-state and national systems. Standards should be identified to foster interoperability of systems and interchangeability of components. When identifying standards, agencies should consider the current status of ITS standards development activities and determine how and when these can best be incorporated into the designs of projects within the region.

Identify ITS Projects for Incorporation Into Transportation Planning Products

ITS projects utilizing funds from the Highway Trust Fund will be incorporated, as appropriate, into transportation planning and programming products (such as the

transportation plan, the STIP, TIP, and the CVSP) and adopted by the metropolitan planning organization or other applicable planning agency. Ultimately, this can be best achieved when the consideration of ITS is consistent with the goals and objectives adopted by regional transportation planning bodies and carried out in the context of the transportation planning process.

VI. Appendices

Appendices include:

- A. Definitions
- B. Questions and Answers
- C. Applicable Legislation

Appendix A. Definitions

For the purpose of explaining terms used in this Interim Guidance, the following definitions are provided:

Intelligent transportation systems (ITS)—As defined in TEA-21, the term “intelligent transportation system” means electronics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

ITS Project—Any project that (in whole or in part) involves the application of ITS.

ITS Project that Affects Regional Integration—An ITS project that can serve as a catalyst in achieving regional ITS integration. Generally, those ITS projects with the potential to support electronic data sharing between transportation stakeholders, projects with substantial software design, projects involving major upgrades of central transportation management functions, and projects involving significant communications would be considered ITS projects that affect regional integration.

ITS/CVO Projects—A subset of ITS projects which: (1) complete any component/service incorporated in the Commercial Vehicle Information Systems and Networks (CVISN) Level 1 deployment, and/or (2) install the International Border Clearance Safety System (IBCSS).

Other ITS Projects—The remaining ITS projects that are not characterized as affecting regional integration or being an ITS/CVO project, as explained above.

CVISN—Commercial Vehicle Information Systems and Networks. A concept that includes the information systems and communications networks that support Commercial Vehicle Operations (CVO). CVISN includes information systems owned and operated by governments, carriers, and other stakeholders.

CVISN Architecture—The ITS/CVO information systems and networks portion of the National ITS Architecture. The CVISN Architecture documentation begins with the National ITS Architecture and adds more detail in some areas (e.g., the operational scenarios and Electronic Data Interchange (EDI) message requirements) to facilitate further development. Documentation is available on the World-Wide Web at <http://jhuapl.edu/program/transport/trans.htm> or contact the FHWA ITS/CVO Division Office at phone: 202-366-0950, fax: 202-366-7908.

CVISN Level 1 Deployment—The development and implementation of basic ITS/CVO information system elements in three capability areas (safety information exchange, credentials administration, and electronic screening) in conformance with the CVISN Architecture and Standards.

International Border Clearance Safety System (IBCSS)—An information system to identify impending border movements, access relevant safety and credentials information, and conduct clearance assessments on motor carriers, commercial motor vehicles, and drivers. The IBCSS is a portion of the International Border Clearance System, which provides the communications path between the commercial motor vehicle (CMV) and the border crossing in support of all border stakeholders, and an electronic border clearance assessment process for motor carriers, commercial motor vehicles, and drivers at North American land borders.

National ITS Architecture (also “national architecture”)—As defined in TEA-21, the National ITS Architecture is the common framework for ITS interoperability that defines

- (A) The functions associated with intelligent transportation system user services;
- (B) The physical entities or subsystems within which the functions reside;
- (C) The data interfaces and information flows between physical subsystems; and
- (D) The communications requirements associated with the information flows.

Documentation is available from the U.S. DOT on the World-Wide Web at <http://www.its.dot.gov> or <http://www.odetics.com/itsarch/> or contact the ITS Joint Program Office at phone: 202-366-9536, fax: 202-366-3302. As of September 20, 1998, Version 2.0 is the official version of the National ITS Architecture.

Regional ITS Architecture—A regional framework for ITS project

development and design, which could be specified at a metropolitan, statewide, multi-state, or interurban corridor level. A regional ITS architecture is tailored to address specific local needs and, for the purposes of this Interim Guidance, includes the subsystems, agencies, and information flows relevant to the area. The National ITS Architecture may serve as a tool in the development of a regional ITS architecture.

ITS User Service—A categorization of ITS that represents what the system will do from the perspective of the user. User services formed the basis for the National ITS Architecture development. As of July 1998, the National ITS Architecture consists of 30 user services. Additional user services are planned for incorporation during the next year or two.

Standard—As defined in TEA-21, the term “standard” means a document that is published by an accredited Standards Development Organization, and

(A) Contains technical specifications or other precise criteria for intelligent transportation systems that are to be used consistently as rules, guidelines, or definitions of characteristics so as to ensure that materials, products, processes, and services are fit for their purposes; and

(B) May support the national architecture and promote

(i) The widespread use and adoption of intelligent transportation system technology as a component of the surface transportation systems of the United States; and

(ii) Interoperability among intelligent transportation system technologies implemented throughout the States.

Provisional Standard—As defined in TEA-21, Section 5206 (c), a provisional standard is a standard that the Secretary may establish if the Secretary finds that the development or balloting of an ITS standard jeopardizes the timely achievement of the objectives identified in Section 5206 (a), after consultation with affected parties, and using, to the extent practicable, the work product of appropriate standards development organizations.

Subsystem—A physical entity within the National ITS Architecture or a regional ITS architecture within which the ITS functions reside. Subsystems are typically associated with one or more transportation agencies or stakeholders. Examples of subsystems from the National ITS Architecture include traffic management, transit management, fleet and freight management, toll administration, emergency management, information service provider, roadway, remote traveler support, and vehicle.

Information (Architecture) Flow—A representation of data that originates at one subsystem (or external system) and ends at another within the National ITS Architecture or a regional ITS architecture, depicting the information exchanges planned between specific agencies. The National ITS Architecture documentation refers to these information flows as physical architecture flows.

Appendix B. Questions and Answers

Applicability and Scope

1. Q: Which federally funded projects does this Interim Guidance apply to?

A: Any ITS project receiving whole or partial funding from the Highway Trust Fund (including the Mass Transit Account) is subject to this Interim Guidance. The Highway Trust Fund includes a broad range of transportation projects and programs, including Federal Aid Highway Programs, Federal Transit Administration programs, and safety programs. Examples of subject programs include (but are not limited to):

1. National Highway System Program,
2. Congestion Mitigation and Air Quality Improvement Program,
3. Surface Transportation Program,
4. Urbanized and Non-Urbanized Areas Formula Grants Programs,
5. Transit Capital Investment Grants and Loans (Section 5309 funding),
6. Motor Carrier Safety Assistance Program Grants,
7. Demonstration projects identified in TEA-21 (including High Priority Projects, and other earmarks under the ITS subtitle),
8. Federal Lands Highways Program,
9. Interstate Maintenance Program,
10. Highway Bridge Program,
11. Job Access and Reverse Commute Program,
12. Rural Transportation Accessibility Programs,
13. Elderly and Persons with Disabilities Program, and
14. Federal Aid Highway Safety Programs.

2. Q: Are any ITS projects excepted from the conformity requirement?

A: Yes. Section 5206(e) of TEA-21 excepts the following projects:

1. Authorized projects designed to achieve specific research objectives outlined in the National ITS Program Plan or the Surface Transportation Research and Development Strategic Plan;
2. The upgrade or expansion of an existing ITS, if the expansion won't adversely affect the goals of conformity, is carried out before the end of the system's useful life, and is cost-effective as compared to alternatives that would be consistent; and
3. Projects to operate or maintain an existing ITS.

In addition, the Interim Guidance excepts projects already in construction and those that have completed the design phase. Note, however, that ITS projects that affect regional integration likely will not be excepted by Number 2 above, because to do so would adversely affect the goals of conformity.

3. Q: Does the Interim Guidance apply to ITS projects that do not receive funding from the Highway Trust Fund?

A: No. The Interim Guidance only applies to ITS projects that receive whole or partial funding from the Highway Trust Fund. However, the Interim Guidance and recommended approach to ITS projects and planning are considered sound practices for regional integration of ITS. Therefore, it is recommended that ITS projects not funded by the Highway Trust Fund also adhere to the Interim Guidance. Examples of projects which would not need to follow the Interim Guidance include projects funded entirely by State or local transportation agencies; projects funded by police, fire, or emergency medical services; and projects which are privately funded.

4. Q: Does the Interim Guidance apply to demonstration projects and other earmarks?

A: The Interim Guidance applies to all ITS projects with funding from the Highway Trust Fund, including demonstration projects (also referred to as “High Priority Projects”). The Interim Guidance also applies to CVO projects as indicated in the ITS/CVO Architecture Conformance Assurance Process. In addition, for ITS projects funded under section 5001 (a) of TEA-21, refer to the Guidance for Congressionally-Designated ITS Projects (commonly referred to as “earmarked projects”).

5. Q: How does the Interim Guidance differ from the Guidance for Congressionally-Designated ITS Projects?

A: The applicability differs in that Interim Guidance applies to all ITS projects funded in part or in whole by the Highway Trust Fund, whereas the guidance for congressionally-designated ITS projects (often known as “earmark” projects) applies only to projects being funded with ITS program category funds found under Section 5001 (a) of TEA-21. The principles and intent of the Interim Guidance and the ITS earmark guidance are the same. However, since congressionally-designated projects are intended to serve as examples for meeting the conformity requirement, the ITS earmark guidance has slightly more detailed and specific documentation requirements. As an example, for one category of earmarked projects (regional deployments), states are being asked to commit to the development of a regional ITS architecture (and other regional ITS systems planning activities) as part of the partnership agreement. In addition, under the ITS earmark guidance, project designs must include specific documentation of architecture conformity, which will be reviewed by FHWA Division and/or FTA Region offices, as appropriate. This is in contrast to the Interim Guidance, which does not require specific documentation, but encourages agencies to incorporate conformity documentation into normal project and planning documentation.

6. Q: Which transit projects does the Interim Guidance apply to?

A: Any ITS project receiving whole or partial funding from the Highway Trust Fund, including the Mass Transit Account, is subject to the Interim Guidance. This is true for both transit and highway projects.

7. Q: Does the Interim Guidance apply to ITS applications that are part of a larger construction project?

A: Yes. The Interim Guidance applies to all ITS projects that receive Highway Trust Funds, even when the ITS application is part of a larger project. However, having an ITS component in a larger project does not subject the non-ITS portions of your project to the Interim Guidance; but, you can consider the Interim Guidance as a framework to look for sensible ways to enhance connectivity in your region. Looking at it another way, larger projects may provide an opportunity to include ITS elements that may not have originally been scoped, such as laying telecommunication cable during construction.

8. Q: Does the Interim Guidance apply to ITS projects outside metropolitan areas or in rural areas?

A: Yes, the Interim Guidance applies outside metropolitan areas and in rural areas. As stated in the Interim Guidance, ITS projects that affect regional integration must be assessed for integration opportunities. Furthermore, development of a statewide architecture which addresses rural and small urban ITS applications is encouraged. Regardless of whether your area is rural or metropolitan, the National ITS Architecture can be useful in the development of the regional architecture.

9. Q: The National ITS Architecture is quite extensive in scope and lays out a multitude of information sharing possibilities. Do I have to plan for all of these interfaces and information exchanges in order to meet the intent of the Interim Guidance?

A: No. It is unlikely that any one region would implement everything envisioned by the National ITS Architecture. Planning and project development should continue to focus on meeting local and/or regional needs. Some of the functionality and information exchanges in the National ITS Architecture will not apply to your situation (e.g., your region might not have any toll roads and thus the Toll Administration and Toll Collection Subsystems of the National ITS Architecture would not apply). Using the National ITS Architecture may help you identify opportunities you might not have otherwise considered in developing your regional ITS architecture and ITS projects. In all circumstances, however, the regional ITS architecture and individual ITS projects should be tailored to local needs and problems.

10. Q: Will National ITS Architecture conformity dictate the characteristics of the design of my ITS system?

A: No. The National ITS Architecture and ITS standards do not specify design; rather, they focus on ensuring interface compatibility and structured information exchange. The National ITS Architecture supports a variety of detailed designs and is flexible enough to support both distributed and centralized systems. The National ITS Architecture does not make technology decisions for you. For example, collection of traffic data can be performed with a variety of technologies, including loop detectors, video imaging, and vehicle probes. Nor are

you required to implement interfaces identified in the National ITS Architecture. The Interim Guidance on National ITS Architecture conformity does, however, imply that information sharing opportunities between transportation stakeholders are explored to the extent possible and appropriate for your area.

11. Q: Does conformity with the National ITS Architecture ensure interoperability?

A: No. The vision of ITS integration is a seamless, interoperable transportation network. Because the National ITS Architecture does not specify the interfaces or the technologies to be used in transportation systems and services, conformity does not ensure interoperability. Only through interjurisdictional agreements and cooperation can interoperability be assured. The National ITS Architecture does provide a framework for determining the needs or desirability of interoperability, and for making the institutional and technological decisions that are the foundation of an interoperable network. Interoperability is furthered through the adoption and widespread use of ITS standards.

12. Q: Will U.S. DOT require interoperability?

A: Where federal funding supports technologies and interfaces considered critical for national interoperability, U.S. DOT expects to require interoperability, but only after the standards have matured to ensure their operational capability. As called for in TEA-21, U.S. DOT is currently developing a list of critical standards appropriate for ensuring interoperability.

13. Q: What is the distinction between the use of the terms "conformity" and "consistency"?

A: The TEA-21 language (Section 5206[e]) addressed by the Interim Guidance calls for "conformity" with the National ITS Architecture and Standards. U.S. DOT's incremental, phased approach to implementing this provision is better reflected by the use of the term "consistency" with the National ITS Architecture. For the purposes of the Interim Guidance, these terms are deemed synonymous.

ITS Projects

14. Q: What are some examples of "ITS projects that affect regional integration" as defined in this Interim Guidance?

A: Generally, ITS projects that affect regional integration are those that can serve as catalysts in achieving ITS integration for a region. Examples of ITS projects that affect regional integration include the construction or functional expansion of a transportation management center, installation or expansion of the functional capability of a communications system, and the purchase of an AVL-equipped bus fleet. Another example is a multi-agency project which aims to integrate transportation systems (e.g., freeway-arterial system integration, traffic-transit integration).

15. Q: What do I do for ITS projects that do not affect regional integration?

A: The Interim Guidance is designed to focus attention on ITS projects that do affect regional integration, but all ITS projects

(receiving Highway Trust Funds) should consider the intent and approach in the Interim Guidance as a way to ensure conformity with the National ITS Architecture and permit cost-effective future expansion should the need arise. Examples of ITS projects that do not affect regional integration are the installation of an isolated traffic signal system in a small, rural town; or the purchase of a limited set of replacement buses.

16. Q: How does the Interim Guidance apply to projects in the final stage of design?

A: Adherence to the Interim Guidance is not required for projects in the final stage of design as of the date of Interim Guidance issuance. However, it is good practice to review projects for anything that can be done at a reasonable cost to facilitate future integration. Projects in the final stage of design are not specifically exempted by the legislation, so the project's lead agency should work with the FHWA Division or FTA Region office to determine the appropriate course of action. Projects for which design has been completed or that are in construction as of the date this Guidance is issued do not need to revisit the design stage.

17. Q: How will existing (legacy) equipment with proprietary interfaces be addressed?

A: The Interim Guidance does not require replacement of legacy systems or equipment having proprietary interfaces. Rather, it is recommended that you plan with existing systems in mind and encourage future investments that would facilitate electronic data-sharing and the use of open interfaces, while minimizing the use of proprietary interfaces. Existing systems such as traffic signals, overhead messages, computer-aided dispatch for ambulances, or automatic vehicle location for buses are an important consideration in developing an ITS project and your regional ITS architecture. As new features and system upgrades are planned, the new designs should provide for open, non-proprietary interfaces identified in the National ITS Architecture and approved ITS standards as appropriate for your area and consistent with your regional ITS architecture.

ITS Considerations Within Transportation Planning

18. Q: Are ITS projects excepted from the metropolitan or statewide planning processes?

A: No. ITS projects should be developed using the same planning processes as other transportation projects, in accordance with metropolitan and statewide planning procedures specified in TEA-21 (sections 1203, 1204, 3004, and 3005). In addition, ITS may be considered as one strategy for addressing the new systems management and operation planning factor requirement in TEA-21.

19. Q: What are the benefits of integrating ITS into the planning process?

A: Statewide and metropolitan planning activities should consider a broad range of actions and investments aimed at improving the management and operation of the transportation system. ITS is a powerful tool

for meeting the system operation and management needs of a region. Like any tool, it is most effective when it has broad support and is applied in the proper circumstances. Regional efforts aimed at identifying appropriate ITS strategies and investments should be advanced in the context of the goals and objectives adopted by the planning process. This will ensure that specific ITS deployment options will address regional transportation goals and objectives in the most effective possible manner. In addition, there is considerable overlap between the planning process and ITS systems planning. The integration of ITS and planning will ensure that these processes are carried out together in a consistent and efficient manner.

20. Q: Who should be the lead in developing a regional ITS architecture?

A: Identifying a lead agency is a local decision; development of a regional architecture can take place in whatever forum suits the area. You are encouraged to develop ITS activities within your existing planning processes. Making use of existing agency agreements and structures may help you to determine who should be involved and who may be best suited to take the lead role.

21. Q: Who should be involved as ITS is considered within the planning process?

A: The range of stakeholder involvement is most appropriately addressed at the local level. A fundamental goal is to involve and unite a wide range of stakeholders to ensure consideration of the broadest range of integration opportunities. It is expected that the number of stakeholders included in any area will grow over time as ITS is incorporated into the regional transportation planning process and the range of ITS activities expands. As a starting point, agencies or other groups within a region that are typically involved in transportation planning or ITS development should be involved. The National ITS Architecture may help you identify stakeholders that are not normally included in the transportation planning process but who may be important to ITS systems planning (e.g., private sector information service providers; police, fire, and other emergency services; and private sector transportation service providers).

22. Q: What if certain stakeholders do not want to participate?

A: The intent of gathering a broad range of stakeholders is to ensure that the consideration and development of potential ITS actions and investments stems from a collaborative, inclusive effort. Good faith efforts should be made to include all stakeholders. Notwithstanding this, the process should begin with those agencies/parties willing to participate.

23. Q: What is a "region" as it relates to the development of a regional ITS architecture?

A: What constitutes a region is a local determination that should be based on the needs for sharing information and coordinating operational strategies in order to address transportation problems. In this context, a region is not constrained by political boundaries, and could be specified at a metropolitan, statewide, multi-state, or inter-urban corridor level. For a metropolitan

region, it is recommended that the size of a region not be smaller than a metropolitan planning area boundary. For ITS/CVO projects, it is recommended that the size of the region not be smaller than a State, with consideration for multi-state, national, and international applications. The size of the region should promote integration of transportation systems by fostering the exchange of information on operating conditions across a number of agencies and jurisdictions.

24. Q: What is the relationship between the nine core components of the metropolitan ITS infrastructure and the National ITS Architecture?

A: The nine core components of the metropolitan ITS infrastructure (Freeway Management, Incident Management, Traffic Signal Control, Electronic Toll Collection, Transit Management, Electronic Fare Payment, Highway Rail Intersections, Emergency Management, and Regional Multimodal Traveler Information) represent an initial way of thinking about the potential types of ITS technologies that could be usefully linked in a metropolitan region. The National ITS Architecture provides the framework necessary for more detailed planning about how to structure the communications and information flows between and among the different subsystems that characterize a fully integrated regional ITS system.

25. Q: How does the Interim Guidance relate to the deployment and integration tracking of CVISN and metropolitan ITS infrastructure that have been ongoing in recent months in some regions?

A: The definitions of metropolitan ITS infrastructure and the framework used in the deployment tracking questionnaire provide excellent starting points for developing and collecting the information necessary for beginning work on a regional ITS architecture in your area. If a deployment tracking survey has already been filled out, it should be very helpful in documenting the existing level of ITS deployment (including information sharing arrangements), which is fundamental to future planning efforts. Further explanation of the metropolitan and CVISN deployment tracking is included in the Resource Guide.

26. Q: Can a regional ITS architecture, developed from an Early Deployment Plan, be used to demonstrate conformity with the National ITS Architecture?

A: Architectures developed under previous early deployment efforts may be considered for potential applicability to the Interim Guidance. Some early deployment studies that do not include architectures, or were not inclusive of a wide range of stakeholders, do not meet the intent and approach of the Interim Guidance. In such cases, additional steps may be necessary, such as identifying/determining information flows between regional architecture subsystems. Conversely, Early Deployment Plans that engaged a broad range of stakeholders and included a regional ITS architecture would likely meet the intent of the Interim Guidance.

Federal Role

27. Q: What is the federal oversight role, specific to integrating ITS into the planning process?

A: The Interim Guidance does not change federal oversight of the transportation planning process. Within existing federal oversight roles and activities, FHWA and FTA staff are encouraged to explore opportunities with their constituents for integrating ITS into the transportation planning process. Such opportunities may become obvious during the development of plan updates to Unified Planning Work Programs, the STIP or TIP, or triennial certifications. These reviews should also consider whether a regional ITS architecture exists, defined at the subsystem and information (architecture) flow level. For commercial vehicle operations, ITS opportunities should be considered during updates of the Commercial Vehicle Safety Plan.

28. Q: How will the Interim Guidance affect the STIP/TIP development cycle?

A: The Interim Guidance is not intended to delay the development cycle (preparation, review, or approval) of a STIP or TIP.

However, applying the Interim Guidance to the transportation planning process at the earliest practical convenience will aid in identifying and capitalizing on potential cost-saving and system-enhancing opportunities.

29. Q: What constitutes the federal oversight role at the project stage?

A: The Interim Guidance does not change the federal oversight role at the project stage. For those ITS projects with federal oversight, the appropriate federal office will ensure that the Interim Guidance is followed as part of the regular review process. For those projects with no federal oversight requirement, recipients are responsible for ensuring that the Interim Guidance is followed. Compliance with the Interim Guidance may be a discussion topic in process or triennial reviews.

30. Q: Are all ITS projects subject to federal oversight?

A: No. Refer to the appropriate oversight procedure for the project in question. If the state DOT is willing, it is suggested that FHWA and FTA be involved in all ITS projects on the National Highway System during the initial implementation period for the Interim Guidance.

31. Q: What kind of help and support can be expected from U.S. DOT?

A: Various support mechanisms are under way or being planned at the present time. A training course on the National ITS Architecture is available now with more offerings planned in the fall of 1998. Technical assistance documents on the use of the National ITS Architecture to facilitate project development and planning for specific application areas will be available shortly. Technical assistance is also available through the U.S. DOT peer-to-peer program. Checklists also will be made available to serve as helpful guidance and reminders. For more information, contact your local FHWA or FTA office, and visit the ITS website: www.its.dot.gov.

ITS Standards

32. Q: What is an ITS standard and which standards have been adopted?

A: Standards define how system components inter-connect and interact within an overall framework called an architecture. The National ITS Architecture identified the need for many ITS standards to support interface compatibility. U.S. DOT has yet to adopt ITS standards, and anticipates proceeding cautiously in order to allow emerging standards to reach a point of acceptability by implementing agencies. Initial standards are just now beginning to be completed and approved by Standards Development Organizations. Once approved by the Standards Development Organizations, it will take some time for standards to be validated to the satisfaction of implementing agencies.

33. Q: Should an ITS standard be used if it has not yet been approved, or adopted by U.S. DOT?

A: If an agency deems that an ITS standard is not yet sufficiently mature for routine use, it should deploy ITS mindful of the new standard and in anticipation of an eventual transition. Your design process may incorporate draft standards, but recognize that these may change before being finalized. Therefore, work with your vendors to be sure that they commit to bringing their products into compliance with the final standard when it is approved.

Documentation

34. Q: What documentation is required for implementation of the Interim Guidance?

A: No new documentation is required, but additional information within existing documentation needs to demonstrate that the intent of the Interim Guidance has been met.

Appendix C. Applicable Legislation*SECTION 5203. GOALS AND PURPOSES [of the Intelligent Transportation Systems Act of 1998].*

(a) Goals.—The goals of the intelligent transportation system program include—

(1) enhancement of surface transportation efficiency and facilitation of intermodalism and international trade to enable existing facilities to meet a significant portion of future transportation needs, including public access to employment, goods, and services, and to reduce regulatory, financial, and other transaction costs to public agencies and system users;

(2) achievement of national transportation safety goals, including the enhancement of safe operation of motor vehicles and nonmotorized vehicles, with particular emphasis on decreasing the number and severity of collisions;

(3) protection and enhancement of the natural environment and communities affected by surface transportation, with particular emphasis on assisting State and local governments to achieve national environmental goals;

(4) accommodation of the needs of all users of surface transportation systems, including operators of commercial vehicles, passenger vehicles, and motorcycles, and including individuals with disabilities; and

(5) improvement of the Nation's ability to respond to emergencies and natural disasters and enhancement of national defense mobility.

(b) Purposes.—The Secretary shall implement activities under the intelligent system transportation program to, at a minimum—

(1) expedite, in both metropolitan and rural areas, deployment and integration of intelligent transportation systems for consumers of passenger and freight transportation;

(2) ensure that Federal, State, and local transportation officials have adequate knowledge of intelligent transportation systems for full consideration in the transportation planning process;

(3) improve regional cooperation and operations planning for effective intelligent transportation system deployment;

(4) promote the innovative use of private resources;

(5) develop a workforce capable of developing, operating, and maintaining intelligent transportation systems; and

(6) complete deployment of Commercial Vehicle Information Systems and Networks in a majority of States by September 30, 2003.

SECTION 5206. NATIONAL ARCHITECTURE AND STANDARDS.

(a) IN GENERAL—

(1) DEVELOPMENT, IMPLEMENTATION, AND MAINTENANCE—Consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note; 110 Stat. 783), the Secretary shall develop, implement, and maintain a national architecture and supporting standards and protocols to promote the widespread use and evaluation of intelligent transportation system technology as a component of the surface transportation systems of the United States.

(2) INTEROPERABILITY AND EFFICIENCY—To the maximum extent practicable, the national architecture shall promote interoperability among, and efficiency of, intelligent transportation system technologies implemented throughout the United States.

(3) USE OF STANDARDS DEVELOPMENT ORGANIZATIONS—In carrying out this section, the Secretary may use the services of such standards development organizations as the Secretary determines to be appropriate.

(b) REPORT ON CRITICAL STANDARDS—Not later than June 1, 1999, the Secretary shall submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure and the Committee on Science of the House of Representatives identifying which standards are critical to ensuring national interoperability or critical to the development of other standards and specifying the status of the development of each standard identified.

(c) PROVISIONAL STANDARDS—

(1) IN GENERAL—If the Secretary finds that the development or balloting of an intelligent transportation system standard jeopardizes the timely achievement of the objectives identified in subsection (a), the Secretary may establish a provisional

standard after consultation with affected parties, and using, to the extent practicable, the work product of appropriate standards development organizations.

(2) CRITICAL STANDARDS—If a standard identified as critical in the report under subsection (b) is not adopted and published by the appropriate standards development organization by January 1, 2001, the Secretary shall establish a provisional standard after consultation with affected parties, and using, to the extent practicable, the work product of appropriate standards development organizations.

(3) PERIOD OF EFFECTIVENESS—A provisional standard established under paragraph (1) or (2) shall be published in the **Federal Register** and remain in effect until the appropriate standards development organization adopts and publishes a standard.

(d) WAIVER OF REQUIREMENT TO ESTABLISH PROVISIONAL STANDARD—

(1) IN GENERAL—The Secretary may waive the requirement under subsection (c)(2) to establish a provisional standard if the Secretary determines that additional time would be productive or that establishment of a provisional standard would be counterproductive to achieving the timely achievement of the objectives identified in subsection (a).

(2) NOTICE—The Secretary shall publish in the **Federal Register** a notice describing each standard for which a waiver of the provisional standard requirement has been granted, the reasons for and effects of granting the waiver, and an estimate as to when the standard is expected to be adopted through a process consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note; 110 Stat. 783).

(3) WITHDRAWAL OF WAIVER—At any time the Secretary may withdraw a waiver granted under paragraph (1). Upon such withdrawal, the Secretary shall publish in the **Federal Register** a notice describing each standard for which a waiver has been withdrawn and the reasons for withdrawing the waiver.

(e) CONFORMITY WITH NATIONAL ARCHITECTURE—

(1) IN GENERAL—Except as provided in paragraphs (2) and (3), the Secretary shall ensure that intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection (a).

(2) SECRETARY'S DISCRETION—The Secretary may authorize exceptions to paragraph (1) for—

(A) projects designed to achieve specific research objectives outlined in the National ITS Program Plan under section 5205 or the Surface Transportation Research and Development Strategic Plan developed under section 508 of title 23, United States Code; or

(B) the upgrade or expansion of an intelligent transportation system in existence

on the date of enactment of this subtitle, if the Secretary determines that the upgrade or expansion—

(i) would not adversely affect the goals or purposes of this subtitle;

(ii) is carried out before the end of the useful life of such system; and

(iii) is cost-effective as compared to alternatives that would meet the conformity requirement of paragraph (1).

(3) **EXCEPTIONS**—Paragraph (1) shall not apply to funds used for operation or maintenance of an intelligent transportation system in existence on the date of enactment of this subtitle.

(f) **SPECTRUM**—The Federal Communications Commission shall consider, in consultation with the Secretary, spectrum needs for the operation of intelligent transportation systems, including spectrum for the dedicated short-range vehicle-to-wayside wireless standard. Not later than January 1, 2000, the Federal Communications Commission shall have completed a rulemaking considering the allocation of spectrum for intelligent transportation systems.

[FR Doc. 98-33699 Filed 12-18-98; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA-98-4908]

Insurer Reporting Requirements; Reports Under 49 U.S.C. on Section 33112(c)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of the annual insurer report on motor vehicle theft for the 1992 and 1993 reporting years. Section 33112(c) of Title 49 of the U.S. Code, requires this information to be compiled periodically and published by the agency in a form that will be helpful to the public, the law enforcement community, and Congress. As required by section 33112(c), these reports provide information on theft and recovery of vehicles; rating rules and plans used by motor vehicle insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts.

ADDRESSES: Interested persons may obtain copies of these reports by contacting the Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are from 9:30 a.m. to 5:00 p.m., Monday through Friday. Requests should refer to Docket No. 96-19; Notice 04.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366-0846. Her fax number is (202) 493-2739.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) was implemented to enhance detection and prosecution of motor vehicle theft (Pub. L. 98-547). The Theft Act added a new Title VI to the Motor Vehicle Information and Cost Savings Act, which required the Secretary of Transportation to issue a theft prevention standard for identifying major parts of certain high-theft lines of passenger cars. The Act also addressed several other actions to reduce motor vehicle theft, such as: increased criminal penalties for those who traffic in stolen vehicles and parts; curtailment of the exportation of stolen motor vehicles and off-highway mobile equipment; establishment of penalties for dismantling vehicles for the purpose of trafficking in stolen parts; and development of ways to encourage decreases in premiums charged to consumers for motor vehicle theft insurance.

Title VI (which has since been recodified as 49 U.S.C. Chapter 331), was designed to impede the theft of motor vehicles by creating a theft prevention standard which required manufacturers of designated high-theft car lines to inscribe or affix a vehicle identification number onto the major component and replacement parts of all vehicle lines selected as high theft. The theft standard became effective in Model Year 1987 for designated high-theft car lines.

The "Anti-Car Theft Act of 1992" amended the law relating to the parts-marking of major component parts on designated high-theft vehicles. One amendment made by the Anti-Car Theft Act was to 49 U.S.C. 33101(10), where the definition of "passenger motor vehicle" now includes a "multipurpose passenger vehicle or light-duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight." Since "passenger motor vehicle" was previously defined to include passenger cars only, the effect of the Anti-Car Theft Act is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be high-theft vehicles subject to the Federal motor vehicle theft prevention standard (49 CFR Part 541).

Section 33112 of Title 49 requires subject insurers or designated agents to

report annually to the agency on theft and recovery of vehicles; rating rules and plans used by insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts. Rental and leasing companies also are required to provide annual theft reports to the agency.

The annual insurer reports provided under section 33112 are intended to aid in implementing the Theft Act and fulfilling the Department's requirements to report to the public the results of the insurer reports. The first annual insurer report, referred to as the Section 612 Report on Motor Vehicle Theft, was prepared by the agency and issued in December 1987. A notice announcing the availability of the first report was published in the **Federal Register** on February 19, 1988, 53 FR 5076. The report included theft and recovery data by vehicle type, make, line, and model which were tabulated by insurance companies and, rental and leasing companies. Comprehensive premium information for each of the reporting insurance companies was also included. These are the eighth and ninth reports and they disclose the same subject information and follow the same reporting format.

Issued on: December 15, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98-33722 Filed 12-18-98; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq

Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: December 14, 1998.

Philip West,

International Tax Counsel (Tax Policy).

[FR Doc. 98-33709 Filed 12-18-98; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: All America Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 2 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-6507.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1998 Revision, on page 36081 to reflect this addition:

ALL AMERICA INSURANCE COMPANY. BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. PHONE: (419) 238-1010. UNDERWRITING LIMITATION b/: \$2,618,000.

SURETY LICENSES c/: AZ, CA, CT, GA, IL, IN, IA, KY, MA, MI, NV, NJ, NY, NC, OH, OK, TN, TX, VA. INCORPORATED IN: Ohio.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject

to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at <http://www.fms.treas.gov/c570/index.html>. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512-1800. When ordering the Circular from GPO, use the following stock number: 048000-00516-1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: December 11, 1998.

Judith R. Tillman,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 98-33490 Filed 12-18-98; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Central Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 3 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-6507.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby

issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1998 Revision, on page 36086 to reflect this addition:

CENTRAL MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891.

PHONE: (419) 238-1010. UNDERWRITING LIMITATION b/: \$11,318,000. SURETY LICENSES c/: AZ, CA, CT, DE, GA, IL, IN, IA, KY, MA, MI, NV, NH, NJ, NM, NY, NC, OH, OK, PA, TN, TX, VT, VA, WV. INCORPORATED IN: Ohio.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at <http://www.fms.treas.gov/c570/index.html> or through our computerized public bulletin board system (FMS Inside Line) at (202) 874-6887. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512-1800. When ordering the Circular from GPO, use the following stock number: 048000-00516-1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

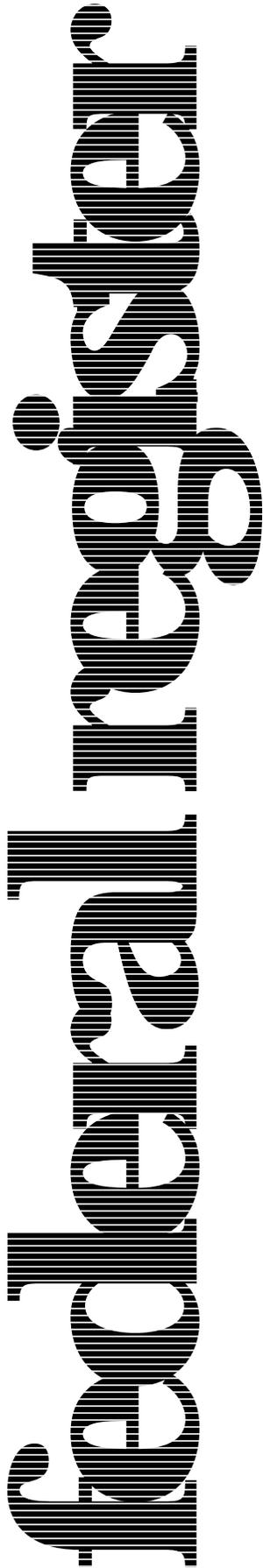
Dated: December 11, 1998.

Judith R. Tillman,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 98-33489 Filed 12-18-98; 8:45 am]

BILLING CODE 4810-35-M



Monday
December 21, 1998

Part II

**Department of
Agriculture**

Rural Utilities Service

7 CFR Part 1755

**RUS Standard for Service Installations at
Customer Access Locations; Proposed
Rule**

DEPARTMENT OF AGRICULTURE**Rural Utilities Service****7 CFR Part 1755****RUS Standard for Service Installations at Customer Access Locations**

AGENCY: Rural Utilities Service, USDA.
ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to amend its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction, by rescinding RUS Bulletin 345-52, RUS Standard for Service Entrance and Station Protector Installations, PC-5A, and codifying the revised standard in the Code of Federal Regulations as RUS Standard for Service Installations at Customer Access Locations. The revised standard will update the installation methods used for installing aerial and buried service drops, network interface devices, fused primary station protectors, and protected building entrance terminals at customer access locations as a result of technological advancements made in installation practices and materials over the past 17 years.

DATES: Comments concerning this proposed rule must be received by RUS or be postmarked no later February 19, 1999.

ADDRESSES: Comments should be mailed to the Orren E. Cameron III, Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1598, Washington, DC 20250-1598. RUS requests an original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at room 2835, South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1598 Washington, DC 20250-1598 between 8 a.m. and 4 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Charlie I. Harper, Jr., Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1598, Washington, DC 20250-1598, telephone (202) 720-0667.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This proposed rule is exempt from the Office of Management and Budget (OMB) review for purposes of Executive Order 12866 and, therefore has not been reviewed by OMB.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with section 212(c) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(c)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator RUS has determined that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule involves standards and specifications, which may increase the direct-short term costs to the RUS borrower. However, the long-term direct economic costs are reduced through greater durability and lower maintenance cost over time. Small entities are not subjected to any requirement which are not applied equally to large entities.

Information Collection and Recordkeeping Requirements

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus this proposed rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Background

RUS issues publications titled "Bulletin" which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure RUS financing. RUS issues standards and specifications for the construction of telecommunications facilities financed with RUS loan funds. RUS is proposing to rescind Bulletin 345-52, RUS Standard for Service Entrance and Station Protector Installations, PC-5A, and to codify the revised standard at 7 CFR 1755.500 through 7 CFR 1755.510, RUS Standard for Service Installations at Customer Access Locations.

RUS Bulletin 345-52 is used by borrowers and contractors as an outside plant construction standard for the installation of aerial and buried service drops and primary station protectors at customer residences. Because of technological advancements and national code changes made in customer drop and protector installation methods and materials over the past 17 years, the installation methods and materials specified in the current standard have become outdated. To allow borrowers and contractors to observe current codes and take advantage of these improved installation methods and materials which will reduce installation costs, the current standard will be revised to update the customer access location installation methods and materials to reflect these improved methods and materials.

This action will allow borrowers and contractors an economical and efficient

means of reducing their construction costs through the use of improved customer access location installation methods and materials.

While this proposed rule proposes to codify the full text of this contract, RUS is considering a new procedure under which we will no longer publish the full text of construction contracts such as this in the CFR. Consequently, it is contemplated that at the final rule stage, the full text of this contract will not appear in codified text.

List of Subjects in 7 CFR Part 1755

Incorporation by reference, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, RUS proposes to amend Chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

§ 1755.97 [Amended]

2. Section 1755.97 is amended by removing the entry RUS Bulletin 345–52 from the table.

3. Section 1755.98 is amended by adding the entry 1755.500 through 1755.510 to the table in numerical order to read as follows:

§ 1755.98 List of telephone standards and specifications included in other 7 CFR parts.

* * * * *

Section	Issue date	Title
* * 1755.500 through 1755.510	* * [Effective date of final rule]	* * RUS Standard for Service Installations at Customer Access Locations.
* *	* *	* *

4. Sections 1755.500 through 1755.510 are added to read as follows:

§ 1755.500 RUS standard for service installations at customers access locations.

(a) Sections 1755.501 through 1755.510 cover service installations at permanent or mobile home customer access locations. Sections 1755.501 through 1755.510 do not cover service installations at customer access locations associated with boat yards or marinas.

(b) Service installations for customer access locations in boat yards or marinas shall be performed in accordance with Article 800, Communications Circuits, of the American National Standards Institute/National Fire Protection Association (ANSI/NFPA) 70–1996, *National Electrical Code*® (*NEC*®). The *National Electrical Code*® and *NEC*® are registered trademarks of the National Fire Protection Association, Inc., Quincy, MA 02269. The ANSI/NFPA 70–1996, *NEC*® is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from NFPA, 1 Batterymarch Park, P. O. Box 9101, Quincy, Massachusetts 02269–9101, telephone number 1 (800) 344–3555. Copies of ANSI/NFPA 70–1996, *NEC*®, are available for inspection during normal business hours at Rural Utilities Service (RUS), room 2845, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1598, Washington, DC 20250–1598 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 1755.501 Definitions.

(a) For the purpose of this section and §§ 1755.502 through 1755.510, the following terms shall have the following meanings:

American National Standards Institute (ANSI). A private sector standards coordinating body which serves as the United States source and information center for all American National Standards.

Ampacity. As defined in the ANSI/NFPA 70–1996, *NEC*®: The current in amperes that a conductor can carry continuously under the conditions of use without exceeding its temperature rating. (Reprinted with permission from NFPA 70–1996, the *National Electrical Code*®, Copyright© 1995, National Fire Protection Association, Quincy, MA 02269. This reprinted material is not the complete and official position of the National Fire Protection Association, on the referenced subject which is represented only by the standard in its entirety.). The *National Electrical Code*® and *NEC*® are registered trademarks of the National Fire Protection Association, Inc., Quincy, MA 02269. The ANSI/NFPA 70–1996, *NEC*®, is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from NFPA, 1 Batterymarch Park, P. O. Box 9101, Quincy, Massachusetts 02269–9101, telephone number 1 (800) 344–3555. Copies of ANSI/NFPA 70–1996, *NEC*®, are available for inspection during normal business hours at RUS, room 2845, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP

1598, Washington, DC 20250–1598 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Bonding. The permanent joining of metallic parts to form an electrically conductive path that will ensure electrical continuity and the capacity to conduct safely any current likely to be imposed.

Bonding harness wire. A reliable electrical conductor purposefully connected between metal parts which are required to be electrically connected (bonded) to one another to ensure the metal parts are at similar electrical potential.

Building entrance terminal (BET). A BET is comprised of a housing suitable for indoor and outdoor installation which contains quick-connect or binding post terminals for terminating both telecommunications service cable conductors and inside wiring cable conductors. The BET also includes primary station protectors and a means of terminating the metallic shields of service entrance cables.

Demarcation point (DP). As defined in the Federal Communications Commission (FCC) rules in 47 CFR Part 68: The point of demarcation or interconnection between telecommunications company communications facilities and terminal equipment, protective apparatus, or wiring at a subscriber's premises. Carrier-installed facilities at, or constituting, the demarcation point shall consist of wire or a jack conforming to subpart F of 47 CFR part 68. "Premises" as used herein generally

means a dwelling unit, other building or a legal unit of real property such as a lot on which a dwelling unit is located, as determined by the telecommunications company's reasonable and nondiscriminatory standard operating practices. The "minimum point of entry" as used herein shall be either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings. The telecommunications company's reasonable and nondiscriminatory standard operating practices shall determine which shall apply. The telecommunications company is not precluded from establishing reasonable clarifications of multiunit premises for determining which shall apply. Multiunit premises include, but are not limited to, residential, commercial, shopping center, and campus situations.

(1) *Single unit installations.* For single unit installations existing as of August 13, 1990, and installations installed after that date, the demarcation point shall be a point within 12 inches (in.) [305 millimeters (mm)] of the primary protector, where there is no protector, within 12 in. (305 mm) of where the telecommunications wire enters the customer's premises.

(2) *Multiunit installations.* (i) In multiunit premises existing as of August 13, 1990, the demarcation point shall be determined in accordance with the local carrier's reasonable and nondiscriminatory standard operating practices. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point 12 in. (305 mm) from where the wiring enters the customer's premises.

(ii) In multiunit premises in which wiring is installed after August 13, 1990, including additions, modifications, and rearrangements of wiring existing prior to that date, the telecommunications company may establish a reasonable and nondiscriminatory practice of placing the demarcation point at the minimum point of entry. If the telecommunications company does not elect to establish a practice of placing the demarcation point at the minimum point of entry, the multiunit premises owner shall determine the location of the demarcation point or points. The multiunit premises owner shall determine whether there shall be a single demarcation point for all customers or separate such locations for each customer. Provided, however, that where there are multiple demarcation

points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point 12 in. (305 mm) from where the wiring enters the customer's premises.

Fuse link. As defined in the ANSI/NFPA 70-1996, *NEC*[®]: A fine gauge section of wire or cable that serves as a fuse (that is, open-circuits to interrupt the current should it become excessive) that coordinates with the telecommunications cable and wire plant, and protective devices. (Reprinted with permission from NFPA 70-1996, the *National Electrical Code*[®], Copyright© 1995, National Fire Protection Association, Quincy, MA 02269. This reprinted material is not the complete and official position of the National Fire Protection Association, on the referenced subject which is represented only by the standard in its entirety.)

Grounding conductor. As defined in the ANSI/NFPA 70-1996, *NEC*[®]: A conductor used to connect equipment or the grounded circuit of a wiring system to a grounding electrode or electrodes. (Reprinted with permission from NFPA 70-1996, the *National Electrical Code*[®], Copyright© 1995, National Fire Protection Association, Quincy, MA 02269. This reprinted material is not the complete and official position of the National Fire Protection Association, on the referenced subject which is represented only by the standard in its entirety.)

Listed. As defined in the ANSI/NFPA 70-1996, *NEC*[®]: Equipment or materials included in a list published by an organization acceptable to the authority having jurisdiction and concerned with product evaluation, that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate designated standards or has been tested and found suitable for use in a specified manner. (Reprinted with permission from NFPA 70-1996, the *National Electrical Code*[®], Copyright© 1995, National Fire Protection Association, Quincy, MA 02269. This reprinted material is not the complete and official position of the National Fire Protection Association, on the referenced subject which is represented only by the standard in its entirety.)

Manufactured home. As defined in the ANSI/NFPA 70-1996, *NEC*[®]: A factory-assembled structure or structures transported in one or more sections, that is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation acceptable to the authority having

jurisdiction where connected to the required utilities, and includes the plumbing, heating, air conditioning, and electric systems contained therein. Unless otherwise indicated, the term "mobile home" includes manufactured homes. (Reprinted with permission from NFPA 70-1996, the *National Electrical Code*[®], Copyright© 1995, National Fire Protection Association, Quincy, MA 02269. This reprinted material is not the complete and official position of the National Fire Protection Association, on the referenced subject which is represented only by the standard in its entirety.)

Mobile home. As defined in the ANSI/NFPA 70-1996, *NEC*[®]: A factory-assembled structure or structures transportable in one or more sections, that is built on a permanent chassis and designed to be used as a dwelling without a permanent foundation where connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electric systems contained therein. Unless otherwise indicated, the term "mobile home" includes manufactured homes. (Reprinted with permission from NFPA 70-1996, the *National Electrical Code*[®], Copyright© 1995, National Fire Protection Association, Quincy, MA 02269. This reprinted material is not the complete and official position of the National Fire Protection Association, on the referenced subject which is represented only by the standard in its entirety.)

Motor home. As defined in the ANSI/NFPA 70-1996, *NEC*[®]: A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle. (Reprinted with permission from NFPA 70-1996, the *National Electrical Code*[®], Copyright© 1995, National Fire Protection Association, Quincy, MA 02269. This reprinted material is not the complete and official position of the National Fire Protection Association, on the referenced subject which is represented only by the standard in its entirety.)

Network interface device (NID). A NID is comprised of a housing suitable for outdoor installation which contains a compartment accessible by only telecommunications employees which includes a primary station protector and the means for terminating telecommunications service wire conductors and metallic shields, and a compartment accessible by customers which includes an RJ-11 plug and jack

of the type specified in part 68 of FCC rules and regulations.

Primary station protector. An assembly which complies with RUS Bulletin 345-39, RUS Specification for Telephone Station Protectors. Copies of RUS Bulletin 345-39 are available upon request from RUS, U.S. Department of Agriculture (USDA), 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522, FAX (202) 690-2268.

Recreational vehicle. As defined in the ANSI/NFPA 70-1996, NEC®: A vehicular-type unit designed to provide temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home. (Reprinted with permission from NFPA 70-1996, the *National Electrical Code*®, Copyright© 1995, National Fire Protection Association, Quincy, MA 02269. This reprinted material is not the complete and official position of the National Fire Protection Association, on the referenced subject which is represented only by the standard in its entirety.)

RUS accepted (material and equipment). Equipment which RUS has reviewed and determined that:

- (1) Final assembly or manufacture of the equipment is completed in the United States, its territories and possessions, or in an eligible country;
- (2) The cost of components within the material or equipment manufactured in the United States, its territories and possessions, or in an eligible country is more than 50 percent of the total cost of all components used in the material or equipment; and
- (3) The material or equipment is suitable for use on systems of RUS telecommunications borrowers.

RUS technically accepted (material and equipment). Equipment which RUS has reviewed and determined that:

- (1) Final assembly or manufacture of the equipment is not completed in the United States, its territories and possessions, or in an eligible country;
- (2) The cost of components within the material or equipment manufactured in the United States, its territories and possessions, or in an eligible country is 50 percent or less than the total cost of all components used in the material or equipment; and
- (3) The material or equipment is suitable for use on systems of RUS telecommunications borrowers.

Travel trailer. As defined in the ANSI/NFPA 70-1996, NEC®: A vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of

such size and weight as to not require special highway movement permits when towed by a motorized vehicle and of gross trailer area less than 320 square feet (29.77 square meters). (Reprinted with permission from NFPA 70-1996, the *National Electrical Code*®, Copyright© 1995, National Fire Protection Association, Quincy, MA 02269. This reprinted material is not the complete and official position of the National Fire Protection Association, on the referenced subject which is represented only by the standard in its entirety.)

Truck camper. As defined in the ANSI/NFPA 70-1996, NEC®: A portable unit constructed to provide temporary living quarters for recreational, travel or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck. (Reprinted with permission from NFPA 70-1996, the *National Electrical Code*®, Copyright© 1995, National Fire Protection Association, Quincy, MA 02269. This reprinted material is not the complete and official position of the National Fire Protection Association, on the referenced subject which is represented only by the standard in its entirety.)

§ 1755.502 Scope.

(a) Sections 1755.503 through 1755.510 cover approved methods of making service installations at customer access locations in telecommunications systems of RUS borrowers.

(b) Requirements in §§ 1755.503 through 1755.510 cover facilities of the type described in the FCC rules in 47 CFR part 68 for one and multi-party customer owned premises wiring.

§ 1755.503 General.

(a) For the purposes of this section and §§ 1755.504 through 1755.510, a NID shall be as defined in § 1755.501 and shall contain both a fuseless primary station protector and a modular plug and jack for each conductor pair, up to a maximum of eleven (11) pairs, and shall be provided by the telecommunications company and used by customers.

(b) For the purposes of this section and §§ 1755.504 through 1755.510, a BET shall be as defined in § 1755.501 and shall contain both primary station protectors and connector terminals for each conductor pair, of twelve (12) or more pairs, and shall be provided by the telecommunications company and used by customers. The primary station protectors may be either fuseless or fused.

(c) The requirements provided in this section and §§ 1755.504 through

1755.510 have been designed to coordinate with the provisions of the ANSI/NFPA 70-1996, NEC®, and the American National Standards Institute/Institute of Electrical and Electronics Engineers, Inc. (ANSI/IEEE) C2-1997, National Electrical Safety Code (NESC). The *National Electrical Code*® and NEC® are registered trademarks of the National Fire Protection Association, Inc., Quincy, MA 02269. The ANSI/NFPA 70-1996, NEC®, and the ANSI/IEEE C2-1997, NESC, are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI/NFPA 70-1996, NEC®, are available from NFPA, 1 Batterymarch Park, P. O. Box 9101, Quincy, Massachusetts 02269-9101, telephone number 1 (800) 344-3555. Copies of ANSI/IEEE C2-1997, NESC, are available from IEEE Service Center, 455 Hoes Lane, Piscataway, New Jersey 08854, telephone number 1 (800) 678-4333. Copies of the ANSI/NFPA 70-1996, NEC®, and the ANSI/IEEE C2-1997, NESC, are available for inspection during normal business hours at RUS, room 2845, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1598, Washington, DC 20250-1598 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Most state and local authorities require that utility construction comply with either the ANSI/NFPA 70-1996, NEC®, and ANSI/IEEE C2-1997, NESC, or some earlier editions of the ANSI/NFPA 70, NEC®, and ANSI/IEEE C2, NESC. Some authorities have their own more stringent codes which may or may not be embellishments of the ANSI/NFPA 70, NEC®, and ANSI/IEEE C2, NESC.

(d) RUS borrowers shall make certain that all construction financed with RUS loan funds comply with:

(1) The provisions of this section and §§ 1755.504 through 1755.510 and the ANSI/NFPA 70-1996, NEC®, and ANSI/IEEE C2-1997, NESC codes, or any more stringent local codes; or

(2) The provisions of this section and §§ 1755.504 through 1755.510 with borrower added adjustments to bring construction into compliance with any more stringent local codes.

(e) This section and §§ 1755.504 through 1755.510 are intended primarily for the installer who will perform the work. It assumes that decisions regarding the selection of grounding electrodes, locations, and types of equipment have been made by the RUS borrower or the engineer delegated by the RUS borrower.

(f) Only a *qualified installer* shall be assigned to make installations without advance planning and without direct

supervision. A *qualified installer* is one who has extensive installation experience, complete knowledge and understanding of RUS Bulletin 1751F-805, Electrical Protection At Customer Locations; RUS Bulletin 345-154 (RUS Form 515g), Specifications and Drawings for Service Entrance and Station Protector Installation, and applicable portions of the ANSI/NFPA 70-1996, *NEC*[®], and ANSI/IEEE C2-1997, NESC. Copies of RUS Bulletins 1751F-805 and 345-154 are available upon request from RUS/USDA, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522, FAX (202) 690-2268.

(g) This section and §§ 1755.504 through 1755.509 contain information which is normally not provided on the construction drawings which are included in § 1755.510.

(h) All work shall be conducted in a careful and professional manner. Service wire and cable shall not be trampled on, run over by vehicles, pulled over or around abrasive objects or otherwise subjected to abuse.

(i) When situations not covered by this section and §§ 1755.504 through 1755.510 arise, the RUS borrower or the engineer delegated by the borrower, shall specify the installation procedure to be used. The requirements of paragraph (j) of this section shall be complied with in every installation.

(j) NIDs, BETs, and fused primary station protectors shall be installed and grounded to meet the requirements of the ANSI/NFPA 70-1996, *NEC*[®], or local laws or ordinances, whichever are more stringent.

(k) Battery polarity and conductor identification shall be maintained throughout the system as indicated on construction drawings 815 and 815-1 contained in § 1755.510. Color codes and other means of conductor identification of buried and aerial service wires shall conform to the requirements of this section and §§ 1755.504 through 1755.510.

(l) All materials for which RUS makes acceptance determinations, such as service wires and cables, ground rods, ground rod clamps, etc., used in service entrance installations shall be RUS accepted or RUS technically accepted. Borrowers shall require contractors to obtain the borrower's approval before RUS technically accepted materials are to be used in service entrance installations. Borrower's shall also ensure that the cost of the RUS technically accepted materials are at least 6 percent less than the cost of equivalent RUS accepted materials, as specified in "Buy American" Requirement of the Rural Electrification

Act of 1938, as amended. Materials used in service entrance installations which are of the type which RUS does not make acceptance determinations shall be of a suitable quality for their intended application as determined by the RUS borrower or the engineer delegated by the RUS borrower.

(m) On completion of an installation, borrowers shall require the installer to make all applicable tests required by §§ 1755.400 through 1755.407, RUS standard for acceptance tests and measurements of telecommunications plant.

§ 1755.504 Demarcation point.

(a) The demarcation point (DP) provides the physical and electrical interface between the telecommunications company's facilities and the customer's premises wiring.

(b) The FCC rules in 47 CFR part 68 require telecommunications providers to establish a "DP" which marks a separation of the provider's facilities from the customer's (owned) premises wiring and equipment.

(c) RUS borrowers shall observe the FCC DP requirement by installing NIDs, BETs, or fused primary station protectors when required by Section 800-30(a)(2) of the ANSI/NFPA 70-1996, *NEC*[®], at all new or significantly modified customer access locations which are financed with RUS loan funds. The *National Electrical Code*[®] and *NEC*[®] are registered trademarks of the National Fire Protection Association, Inc., Quincy, MA 02269. The ANSI/NFPA 70-1996, *NEC*[®], is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101, telephone number 1 (800) 344-3555. Copies of ANSI/NFPA 70-1996, *NEC*[®], are available for inspection during normal business hours at RUS, room 2845, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1598, Washington, DC 20250-1598 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) For all customer access locations of less than 12 pairs, RUS borrowers shall establish DPs by using either NIDs or fused primary station protectors when required by Section 800-30(a)(2) of the ANSI/NFPA 70-1996, *NEC*[®]. For customer access locations of 12 pairs or greater, RUS borrowers shall establish DPs using either NIDs, BETs, or fused primary station protectors when required by Section 800-30(a)(2) of the ANSI/NFPA 70-1996, *NEC*[®].

§ 1755.505 Buried services.

(a) Buried services of two or three pairs shall consist of Service Entrance, Buried (SEB) assembly units, in accordance with RUS Bulletin 345-154 (RUS Form 515g), Specifications and Drawings for Service Entrance and Station Protector Installations. The wire used for buried services shall conform to the requirements of § 1755.860, RUS specification for filled buried wires, and shall be RUS accepted or RUS technically accepted. The conductor size for two and three pair buried service wires shall be 22 American Wire Gauge (AWG). Copies of RUS Bulletin 345-154 are available upon request from RUS/USDA, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522, FAX (202) 690-2268.

(b) Buried services of six or more pairs shall be RUS accepted or RUS technically accepted 22 AWG filled buried cable conforming to the requirements of § 1755.390, RUS specification filled telephone cables.

(c) Buried service wire or cable shall be terminated in buried plant housings using either splicing connectors or filled terminal blocks in accordance with the applicable paragraphs of § 1755.200, RUS standard for splicing copper and fiber optic cables.

(d) Buried service wire or cable shall be identified at buried plant housings in accordance with construction drawing 958 contained in § 1755.510.

(e) Buried service wire or cable shall be installed up to the building in the same general manner as buried exchange cable but in addition must meet the following requirements:

- (1) Light weight lawn plows or trenchers shall be used;
- (2) The shortest feasible route commensurate with the requirements of § 1755.508 (i), (j), and (k) and paragraph (f)(1) of this section shall be followed;
- (3) Buried service wire or cable shall be plowed or trenched to a depth of 24 in. (610 mm) or greater where practicable in soil, 36 in. (914 mm) in ditches, or 3 in. (76 mm) in rock. Depths shall be measured from the top of the wire or cable to the surface of the ground or rock;
- (4) In the case of a layer of soil over rock either the minimum depth in rock measured to the surface of the rock, or the minimum depth in soil measured to the surface of the soil may be used; and
- (5) Where adequate advance planning has been done, burial of telecommunications services jointly with electric power services may be feasible. If a decision has been reached by management to provide joint occupancy services, the services may be installed using the recommendations in

RUS Bulletin 305-1, "Joint Use of Facilities for Telephone and Electric Service." Copies of RUS Bulletin 305-1 are available upon request from RUS/USDA, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522, FAX (202) 690-2268.

(f) Buried service wire or cable shall be installed on or in buildings as follows:

(1) Each buried service wire or cable shall contact the building as close to the NID, BET, or fused primary station protector as practicable. Service wire or cable runs on buildings shall normally consist of a single vertical run held to the minimum practical length. Horizontal and diagonal runs shall not be permitted.

(2) Buried service wire or cable shall be located so as to avoid damage from lawn mowers, animals, gardening operations, etc.

(3) Buried service wire or cable shall be installed against a foundation wall or pillar to provide adequate support and mechanical protection.

(4) Where it is likely that the service wire or cable shall be subjected to mechanical damage, the wire or cable shall be enclosed in a guard in accordance with assembly unit drawing BM83 contained in § 1755.510.

(5) The first above-ground attachment for a buried service wire or cable, unless it is enclosed in a guard, shall not be more than 4 in. (100 mm) above final grade.

(6) Uninsulated attachment devices may be used to attach buried service wire and cable to masonry and other types of noncombustible buildings and on any type of building if fuseless primary station protectors incorporated in NIDs or BETs are used and installations fully comply with Section 800-30(a)(1) of the ANSI/NFPA 70-1996, *NEC*[®]. The *National Electrical Code*[®] and *NEC*[®] are registered trademarks of the National Fire Protection Association, Inc., Quincy, MA 02269. The ANSI/NFPA 70-1996, *NEC*[®], is incorporated by reference in

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(7) Insulated attachments shall be used to separate service wires or cables from woodwork where Section 800-30(a)(2) of the ANSI/NFPA 70-1996, *NEC*[®], requiring the use of fused primary station protectors must be observed.

(8) Minimum separation between buried service wire or cable and other facilities shall be as listed in Table 1, as follows:

TABLE 1.—MINIMUM SEPARATION FOR TELECOMMUNICATIONS WIRES AND CABLES ON OR IN BUILDINGS

	Minimum clearance in. [mm] ^{1, 2} telecommunications company's wires or cables
Foreign facility or obstruction	
Electric supply wire including neutral and grounding conductors.	
Open	4 [102]
In conduit	2 [50.8]
Radio and television antennas, lead-in and grounding conductors.	4 [102]
Lightning rods and lightning conductors.	72 [1830] ³
All foreign grounding conductors except lightning rod ground conductors.	2 [50.8]
Neon signs and associated wiring.	6 [150]
Metallic objects—pipes (gas, cold water, oil, sewer,) and structures.	2 [50.8] ⁴

TABLE 1.—MINIMUM SEPARATION FOR TELECOMMUNICATIONS WIRES AND CABLES ON OR IN BUILDINGS—Continued

Foreign facility or obstruction	Minimum clearance in. [mm] ^{1, 2} telecommunications company's wires or cables
Wires or cables of another communications system.	2 [50.8]

Notes: ¹If minimum separation cannot be obtained, nonshielded wire and cable facilities shall be protected with either porcelain tubes or flexible tubing as modified by Notes 3 and 4 of this table.

²Separation applies to crossings and parallel runs.

³If this separation cannot be obtained, bond the telecommunications grounding conductors or grounding electrode to the lightning rod grounding conductor or grounding electrode with at least a Number (No.) 6 AWG copper, insulated, ground wire. With this provision a minimum separation of 4 in. (100 mm) is acceptable but this provision must not be utilized if the separation cited in this table can be maintained.

⁴Increase to a minimum of 3 in. (75 mm) separation from steam or hot water pipes, heating ducts, and other heat sources.

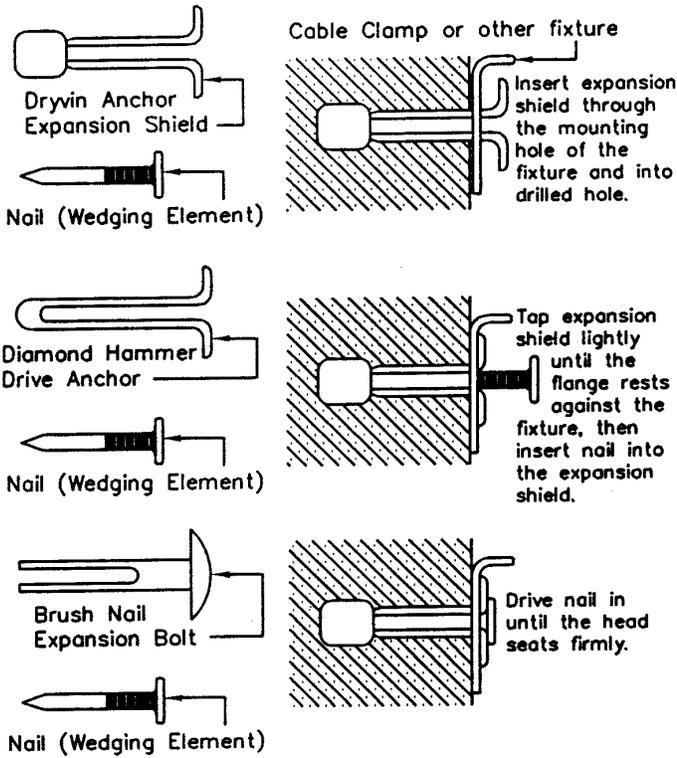
(9) Wire and cable attachments to buildings for outside mounted NIDs, BETs, or fused primary station protectors shall be in accordance with construction drawing 962 contained in § 1755.510.

(10) Appropriate devices for attaching service wire or cable on or in buildings vary with the type of building construction and the wire or cable size. Figures 1 and 2 illustrate various types of anchoring devices and their applications. The size and type of fastening device for the wire or cable size and type of surface shall be in accordance with the manufacturer's recommendation; Figures 1 and 2 are as follows:

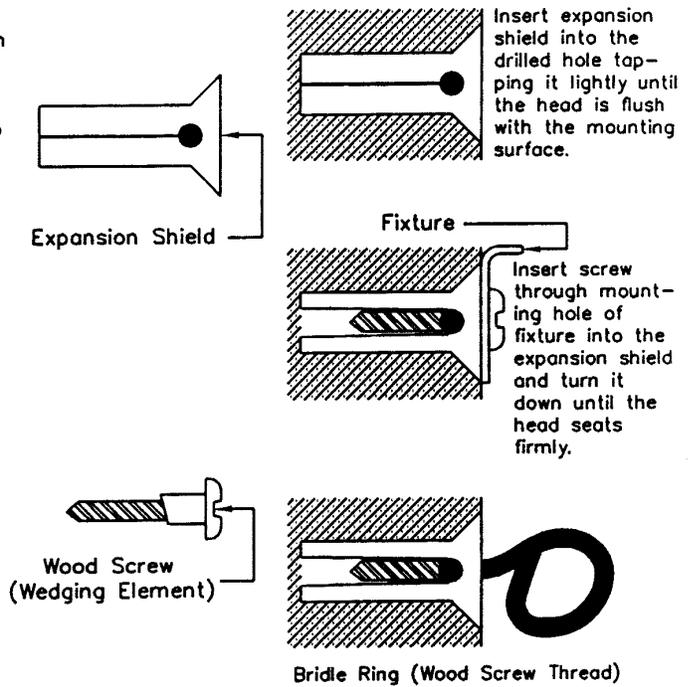
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FIGURE 1 ANCHORING DEVICES

HAMMER DRIVE ANCHORS



SCREW ANCHOR



MACHINE BOLT ANCHOR

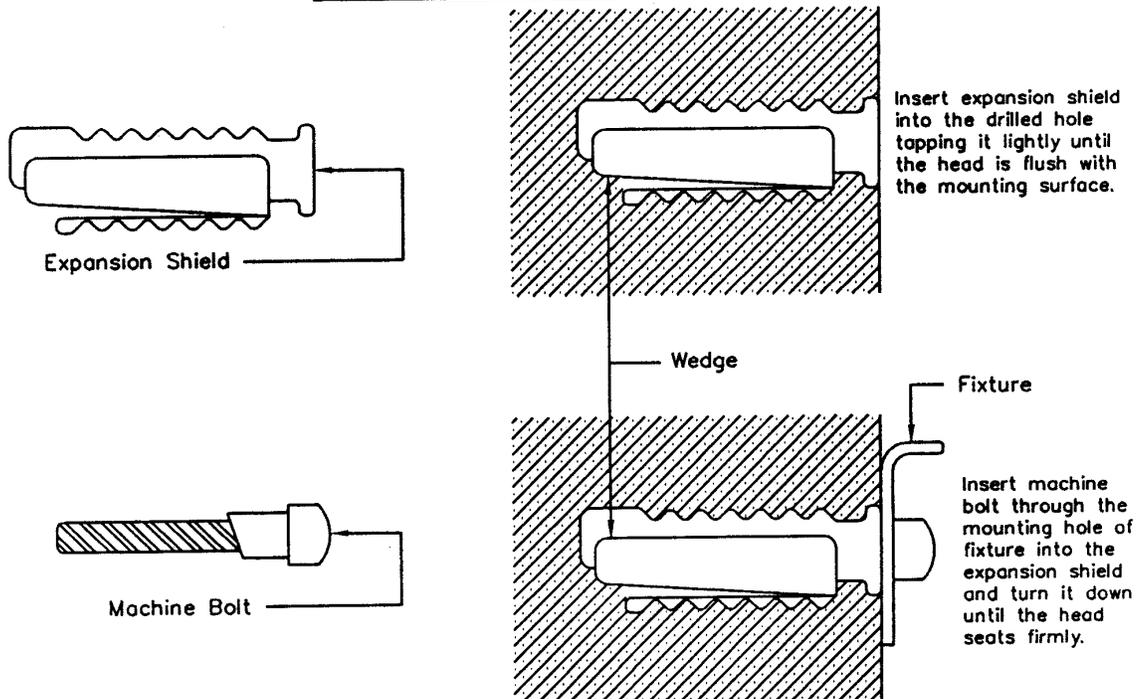
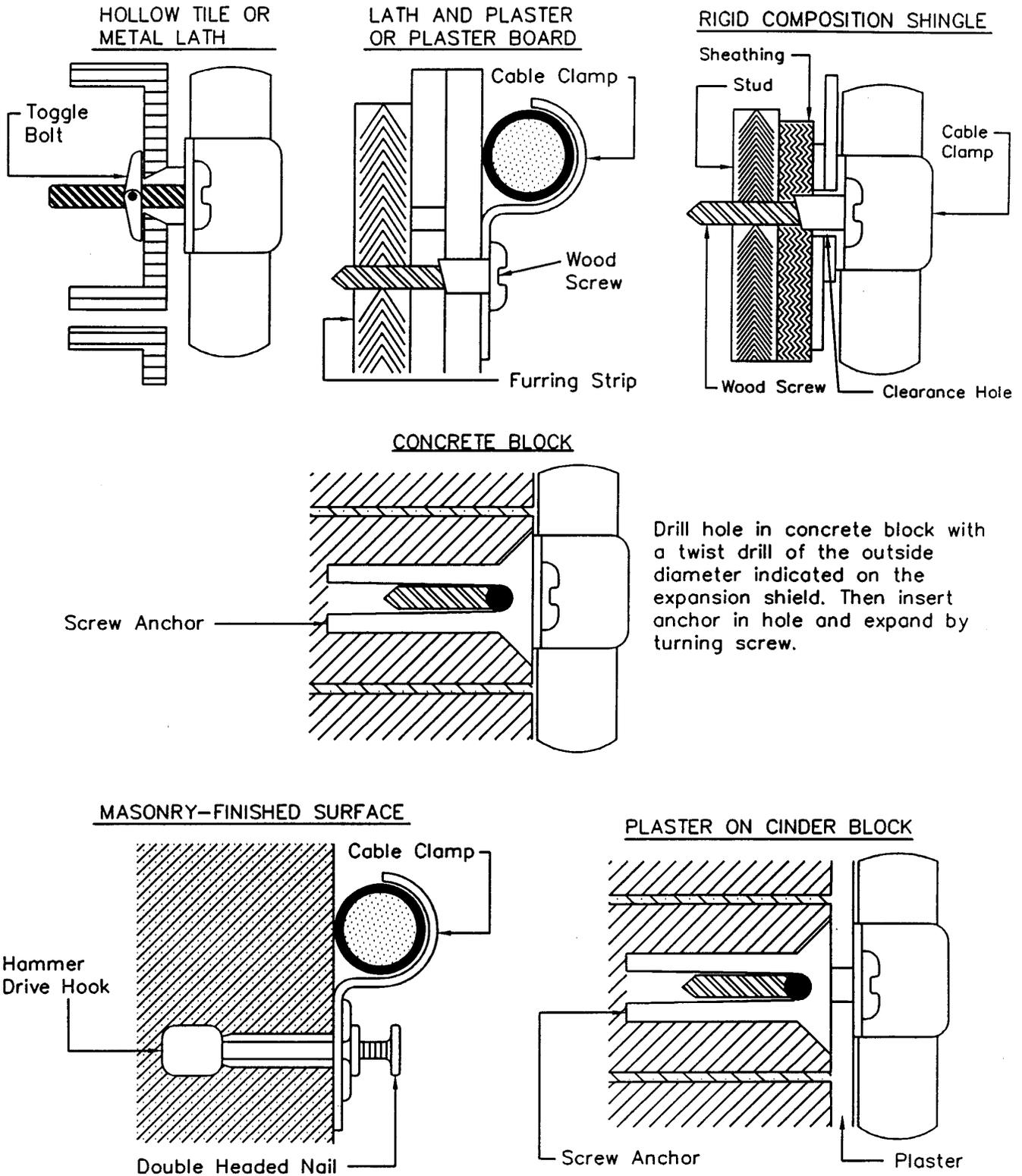


FIGURE 2 CABLE ATTACHMENT DEVICES



(11) Experience indicates that there are strenuous objections from many owners of buildings covered with aluminum or vinyl siding to the drilling

of holes in the siding for the attachment of wires or cables, and NIDs, BETs, or fused primary station protectors. It is, therefore, important to obtain

permission from the owner before drilling holes in such siding.

(12) If the NID, BET, or fused primary station protector must be mounted

inside (not recommended by RUS), the service entrance into the building shall be installed in accordance with Section 800-12(c) of the ANSI/NFPA 70-1996, *NEC*[®]. After pulling-in the wire or cable, the free space around the cable or wire shall be carefully sealed both outside and inside with a duct sealer that has RUS acceptance or RUS technical acceptance.

(13) If the customer requests an all buried installation for an alarm system or objects to above-ground facilities because of appearance and one-party service is involved, the entrance hole shall be made below grade as shown in sketch C of construction drawing 510-2 contained in § 1755.510. Care shall be exercised to prevent damage to the building foundation. The hole shall be sealed as specified in paragraph (f)(12) of this section. The installation shall comply with all the requirements of Section 800-12(c) of the ANSI/NFPA 70-1996, *NEC*[®].

(g) When the NID, BET, or fused primary station protector is to be installed inside the building, the installation shall comply with Section 800-12(c) of the ANSI/NFPA 70-1996, *NEC*[®], and the outside plant wire or cable shall preferably be installed in a rigid metal or intermediate metal conduit that is grounded to an electrode in accordance with Section 800-40(b) of the ANSI/NFPA 70-1996, *NEC*[®], as shown in sketch A of Figure 3 in paragraph (h)(2) of this section. The shield of the outside plant wire or cable shall be bonded to the grounding terminal of the NID, BET, or fused primary station protector which in turn shall be connected to the *closest*, existing, and accessible grounding electrode, of the electrodes cited in Section 800-40 of the ANSI/NFPA 70-1996, *NEC*[®].

(h) An inside NID, BET, or fused primary station protector installation may also be made without use of a rigid metal or intermediate metal conduit provided that the ingress of the outside plant wire or cable complies with Section 800-12(c) of the ANSI/NFPA 70-1996, *NEC*[®], and provided either of the following are observed:

(1) The NID, BET, or fused primary station protector is located as close as practicable to the point where the outside plant wire or cable emerges through an exterior wall. The length of outside plant wire or cable exposed within the building shall be as short as practicable but in no case shall it be longer than 50 feet (ft) [15.2 meters (m)] in accordance with the allowable exception No. 3 of Section 800-50 of the ANSI/NFPA 70-1996, *NEC*[®]. See sketch B of Figure 3 in paragraph (h)(2) of this section. The shield of the outside plant wire or cable shall be bonded to the grounding terminal of the NID, BET, or fused primary station protector which in turn shall be connected to the *closest*, existing and accessible grounding electrode, of the electrodes cited in Section 800-40 of the ANSI/NFPA 70-1996, *NEC*[®] (Fine print Note No. 2 of ANSI/NFPA 70-1996, *NEC*[®], Section 800-50, warns that the full 50 ft (15.2 m) may not be authorized for outside unlisted cable (not in a metal or intermediate metal conduit) within a building if it is practicable to place the NID, BET, or fused primary station protector closer than 50 ft (15.2 m) to the cable entrance point, e.g., if there is an acceptable and accessible grounding electrode of the type cited in Section 800-40 of the ANSI/NFPA 70-1996, *NEC*[®], anywhere along the proposed routing of the outside cable within the building); or

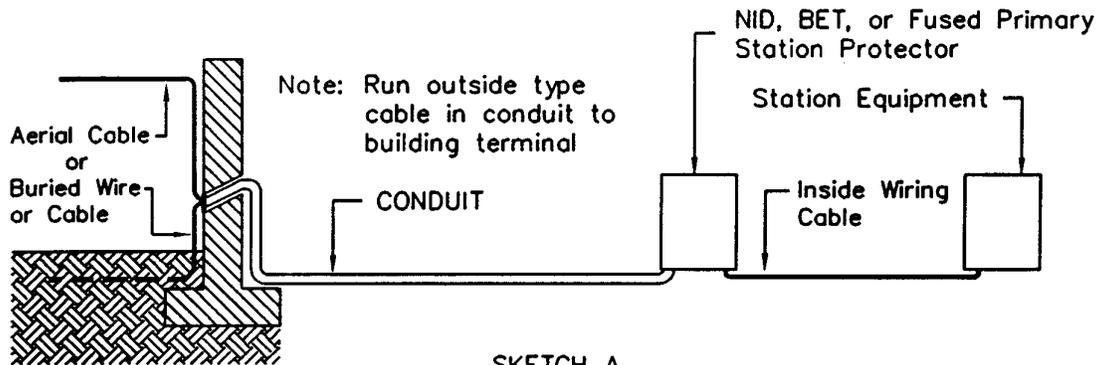
(2) Where the NID, BET, or fused primary station protector must be

located within the building remote from the entrance point and the entrance point of the outside plant wire or cable cannot be designed to be closer to the NID, BET, or fused primary station protector location, the outside plant wire or cable shall be spliced, as close as practicable to the point where the outside plant wire or cable emerges through an outside wall, to an inside wiring cable that is "Listed" as being suitable for the purpose in accordance with Part E of Article 800 of the ANSI/NFPA 70-1996, *NEC*[®]. The length of outside plant wire or cable exposed within the building shall be as short as practicable but in no case shall it be longer than 50 ft (15.2 m) in accordance with the allowable exception No. 3 of Section 800-50 of the ANSI/NFPA 70-1996, *NEC*[®]. See sketch C of Figure 3. The shield of the outside plant wire or cable shall be bonded to the grounding terminal of the NID, BET, or fused primary station protector which in turn shall be connected to the *closest*, existing, and accessible grounding electrode, of the electrodes cited in Section 800-40 of the ANSI/NFPA 70-1996, *NEC*[®] (Fine print Note No. 2 of the ANSI/NFPA 70-1996, *NEC*[®], Section 800-50, warns that the full 50 ft (15.2 m) may not be authorized for outside unlisted cable (not in a metal or intermediate metal conduit) if it is practicable to place the NID, BET, or fused primary station protector closer than 50 ft (15.2 m) to the cable entrance point, e.g., if there is an acceptable and accessible grounding electrode of the type cited in Section 800-40 of the ANSI/NFPA 70-1996, *NEC*[®], anywhere along the proposed routing of the outside cable within the building). Figure 3 is as follows:

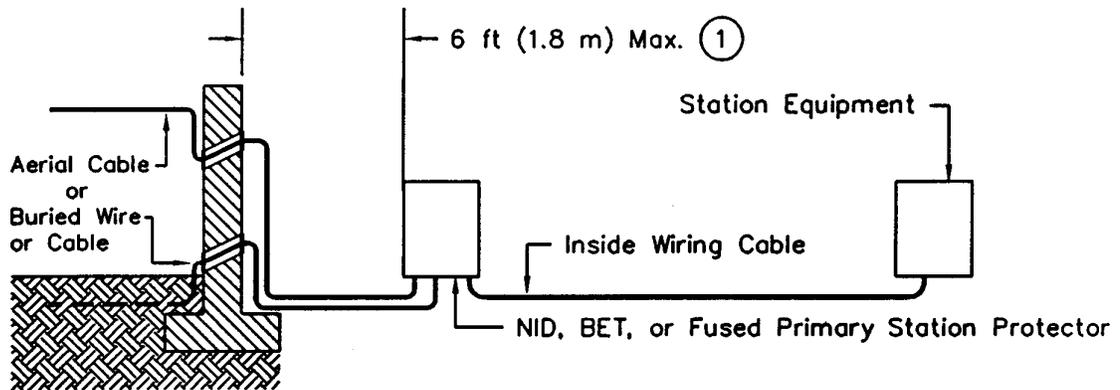
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FIGURE 3

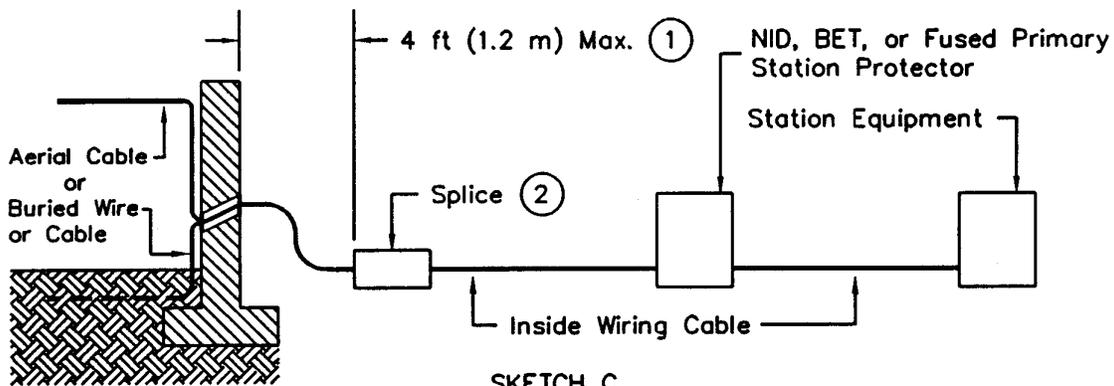
CABLE ENTRANCES AND RUNS IN BUILDINGS



SKETCH A



SKETCH B



SKETCH C

Notes:

- ① Recommended maximum is shown; length cannot exceed the ANSI/NFPA 70-1996, NEC[®] allowable length of 50 ft (15.2 m). (See Fine Print Note No. 2 of Section 800-50 of ANSI/NFPA 70-1996, NEC[®])
- ② Outside plant cable shield shall be connected to an acceptable grounding electrode. If splice case is metallic, the splice case shall also be connected to the same acceptable grounding electrode.

(i) The polarity of buried wire or cable maintained by making the connections “tip” and “ring” conductors shall be in accordance with Table 2, as follows:

TABLE 2.—COLOR CODES FOR TIP AND RING CONNECTIONS OF INSIDE WIRING CABLE

Pair	Tip		Ring	
	Color of insulation	Color of marking	Color of insulation	Color of marking
1	White	Blue	Blue	White
2	White	Orange	Orange	White
3	White	Green	Green	White
4	White	Brown	Brown	White
5	White	Slate	Slate	White
6	Red	Blue	Blue	Red
7	Red	Orange	Orange	Red
8	Red	Green	Green	Red
9	Red	Brown	Brown	Red
10	Red	Slate	Slate	Red
11	Black	Blue	Blue	Black
12	Black	Orange	Orange	Black
13	Black	Green	Green	Black
14	Black	Brown	Brown	Black
15	Black	Slate	Slate	Black
16	Yellow	Blue	Blue	Yellow
17	Yellow	Orange	Orange	Yellow
18	Yellow	Green	Green	Yellow
19	Yellow	Brown	Brown	Yellow
20	Yellow	Slate	Slate	Yellow
21	Violet	Blue	Blue	Violet
22	Violet	Orange	Orange	Violet
23	Violet	Green	Green	Violet
24	Violet	Brown	Brown	Violet
25	Violet	Slate	Slate	Violet

§ 1755.506 Aerial wire services.

(a) Aerial services of one through six pairs shall consist of Service Entrance, Aerial (SEA) assembly units, in accordance with RUS Bulletin 345-154 (RUS Form 515g), Specifications and Drawings for Service Entrance and Station Protector Installations. The wire used for aerial services shall conform to the requirements of §§ 1755.700 through 7 CFR 1755.704, RUS specification for aerial service wires, and shall be RUS accepted or RUS technically accepted. Copies of RUS Bulletin 345-154 are available upon request from RUS/USDA, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522, FAX (202) 690-2268.

(b) If aerial wire services are to be connected to aerial cable pairs, the NIDs or fused primary station protectors and grounds shall be installed and connected before the aerial service wires are attached to the customer's structure.

(c) Kinks or splices shall not be permitted in aerial service wire spans.

(d) Aerial service wires shall be run in accordance with the construction drawings contained in § 1755.510 and shall conform to all clearance requirements of the ANSI/NFPA 70-1996, NEC®, and ANSI/IEEE C2-1997, NESC, or local laws or ordinances, whichever are the most stringent. The National Electrical Code® and NEC® are

registered trademarks of the National Fire Protection Association, Inc., Quincy, MA 02269. The ANSI/NFPA 70-1996, NEC®, and ANSI/IEEE C2-1997, NESC, are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI/NFPA 70-1996, NEC®, are available from NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101, telephone number 1 (800) 344-3555. Copies of ANSI/IEEE C2-1997, NESC, are available from IEEE Service Center, 455 Hoes Lane, Piscataway, New Jersey 08854, telephone number 1 (800) 678-4333. Copies of ANSI/NFPA 70-1996, NEC®, and ANSI/IEEE C2-1997, NESC, are available for inspection during normal business hours at RUS, room 2845, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1598, Washington, DC 20250-1598 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) Aerial service wire shall be installed using the maximum practicable sag consistent with the required ground clearance and good construction practices. In no event shall the minimum sags be less than the values shown on construction drawing 505 contained in § 1755.510 for various

span lengths and loading areas provided. Span lengths shall not exceed 250 ft (76 m).

(f) To reduce vibration and galloping, aerial service wire shall be twisted one complete turn for each 10 ft (3 m) of span length at the time of installation.

(g) The methods of attaching aerial service wires at poles shall be as illustrated in construction drawings 503-2 and 504 contained in § 1755.510.

(h) A horizontal climbing space of 24 in. (610 mm) shall be provided on poles used jointly with power circuits that operate at 300 volts or less, provided the telecommunications conductors are positioned below the power conductors; however, if the telecommunications conductors are installed above power conductors that operate at 300 volts or less (a practice which is highly discouraged and not practicable), a horizontal climbing space of 30 in. (762 mm) shall be provided as indicated on construction drawing 702 contained in § 1755.510. A climbing space of 30 in. (762 mm) shall be provided on poles used jointly with power circuits that operate at voltages greater than 300 volts but less than 15 kilovolts (kV) as indicated on construction drawing 702 contained in § 1755.510. On jointly used poles with power conductors operating at voltages greater than 15 kV, climbing space shall be provided in conformance

with the requirements of Rule 236 of the ANSI/IEEE C2-1997, NESC. Climbing space shall be projected vertically 40 in. (1.02 m) above and below the bounding telecommunications conductors on jointly used poles with power conductors unless the telecommunications conductors are installed above the power conductors (a practice which is highly discouraged and not practicable) and the power conductors operate at voltages greater than 8.7 kV line-to-ground or 15 kV line-to-line, in which case the projected vertical space shall be increased to 60 in. (1.5 m).

(i) Not more than four aerial service wires shall be distributed from any one in 7/16 in. (10 mm) drive hook, or more than two aerial service wires from any one 5/16 in. (8 mm) drive hook. Aerial service wires and drive hooks shall be arranged so that the load does not pull the drive hook out of the pole. When more than one drive hook is required, the drive hooks shall be staggered with

a minimum separation of 1 in. (25.4 mm) horizontally on centers and 1.5 in. (40 mm) vertically on centers. If drive hooks are placed within 3 in. (76 mm) of the top of the pole and on the opposite side of the pole's circumference, a vertical separation of at least 3 in. (76 mm) shall be provided. A drive hook shall not be placed on the top of a pole or stub pole.

(j) When connecting aerial service wires to cable pairs at terminals, sufficient slack shall be provided so that each aerial service wire shall reach any binding post position as shown on construction drawing 312-1 contained in § 1755.510.

(k) Aerial service wire attachments on utility poles and the manner of placing bridle rings and entering cable terminals shall be as shown on construction drawing 503-2 contained in § 1755.510.

(l) Not more than two conductors shall be connected to any terminal binding post. Where it is necessary to bridge more than two aerial service wires at the same closure, the aerial

service wires shall be terminated in aerial service wire terminals connected in parallel with a No. 20 AWG bridle wire which shall be terminated on the binding posts of the filled terminal block.

(m) Where aerial service wire is attached to aerial plastic cable, it shall be brought directly into a ready-access closure and shall be terminated on the binding posts of the filled terminal block as shown on construction drawing 503-2 contained in § 1755.510.

(n) The conductor of copper coated steel reinforced aerial service wires identified by tracer ridges shall be used as the ring (negative battery) conductor of the pair, and shall normally be connected to the right or lower binding post of a pair on filled terminal blocks and NIDs or fused primary station protectors.

(o)(1) The tip and ring conductors of nonmetallic reinforced aerial service wires shall be identified in accordance with Table 3, as follows:

TABLE 3.—NONMETALLIC REINFORCED AERIAL SERVICE WIRE COLOR CODE

Pair No	Conductor color	
	Tip	Ring
1	White/Blue or White	Blue.
2	White/Orange or White	Orange.
3	White/Green or White	Green.
4	White/Brown or White	Brown.
5	White/Slate or White	Slate.
6	Red/Blue or Red	Blue.

(2) The ring (negative battery) conductor of the pair shall normally be connected to the right or lower binding post of a pair on filled terminal blocks and NIDs or fused primary station protectors.

(p) When it is necessary to avoid intervening obstacles between a pole and a building, span clamp attachments shall be used to support the aerial service wires at points between the poles that are supporting the cable on the suspension strand as indicated by construction drawings 501-1 and 501-2 contained in § 1755.510.

(q) Aerial service wire strung from pole to pole shall be placed entirely below or entirely above any existing wire or cable. When adequate ground clearance can be obtained, preference shall be given to placing aerial service wire below wire and cable.

(r) When more than one aerial service wire is installed from pole to pole, the first aerial service wire shall be sagged in accordance with construction drawing 505 contained in § 1755.510. Succeeding aerial service wires shall be

sagged with 2 in. (50.8 mm) more sag for each aerial service wire.

(s) Aerial service wire spans from pole lines to buildings shall follow the shortest feasible route commensurate with the requirements of paragraph (t) of this section and shall be sagged in accordance with construction drawing 505 contained in § 1755.510. The route shall avoid trees and other obstructions to the extent practicable. Where trees cannot be avoided, tree trimming permission shall be obtained from the owner or the owner's representative, and all limbs and foliage within 2 ft (600 mm) of the finally sagged wire shall be removed. If tree trimming permission cannot be obtained, the matter shall be referred to the borrower for resolution before proceeding with the installation.

(t) Aerial service wires shall contact buildings as closely as practicable at a point directly above the NID, or fused primary station protector. Generally, horizontal drop wire runs on buildings shall not exceed 20 ft (6 m). The warning given in § 1755.505(f)(11)

regarding drilling holes in aluminum and vinyl siding applies also to attaching aerial service wires.

(u) The point of the first building attachment shall be located so that the aerial service wire will be clear of roof drainage points.

(v) Where practicable, aerial service wires shall pass under electrical guys, power distribution secondaries and services, tree limbs, etc.

(w) Aerial service wire shall not pass in front of windows or immediately above doors.

(x) Aerial service wires shall be routed so as to have a minimum clearance of 2 ft (600 mm) from any part of a short wave, ham radio, etc. antenna mast and a television antenna mast in its normal vertical position and of the possible region through which it sweeps when being lowered to a horizontal position.

(y) Aerial service wires shall be installed such that all clearances and separations comply with either Section 237 of the ANSI/IEEE C2-1997, NESC, or ANSI/NFPA 70-1996, *NEC*[®], or local

laws or ordinances, whichever is the most stringent.

(z) Aerial service wire attachments to buildings shall be as follows:

(1) First attachments on buildings shall be made in accordance with construction drawings 506, 507, or 508-1 contained in § 1755.510, as applicable;

(2) Intermediate attachments on buildings shall be made in accordance with construction drawings 510 or 510-1 contained in § 1755.510; and

(3) Uninsulated attachments shall be permitted to be used as follows:

(i) Wherever NIDS are used as permitted by Section 800-30(a)(1) of the ANSI/NFPA 70-1996, *NEC*[®]; and

(ii) On masonry and other types of nonflammable buildings.

(aa) Insulated attachments shall be used on wooden frame, metallic siding

and other types of combustible buildings where fused primary station protectors are used, as required by Section 800-30(a)(2) of the ANSI/NFPA 70-1996, *NEC*[®].

(bb) Aerial service wire runs on buildings shall be attached vertically and/or horizontally in a neat and most inconspicuous possible manner. See construction drawing 513 contained in § 1755.510. Horizontal runs on buildings are undesirable and shall be kept to a minimum. Diagonal runs shall not be made.

(cc) Aerial service wire runs on buildings shall be located so as not to be subjected to damage from passing vehicles, pedestrians, or livestock.

(dd) Minimum separation between aerial service wires and other facilities

on or in buildings shall be in accordance with § 1755.505(f)(8),

Table 1.

(ee) Appropriate devices for attaching aerial service wires to buildings vary with the type of building construction and with the type of customer access location equipment. Table 4 lists various types of attachments and their application with respect to construction, customer access location equipment, and proper mounting devices. Construction drawings 506 through 513 contained in § 1755.510 illustrate requirements with respect to various angles of service wire contacts and uses of various attachments. Table 4 is as follows:

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Table 4

DEVICES FOR ATTACHING AERIAL SERVICE WIRES TO BUILDINGS (1), (2), (8)

TYPE OF ATTACHMENT		TYPES OF FASTENING DEVICES											
		FRAME BUILDINGS (3)								FIRE RESISTANT BUILDINGS (4)			
		FUUSED STATION PROTECTOR				NID				(NID OR FUUSED STATION PROTECTOR)			
		Wood Shingle-Composition (5)	Plywood-Plastic-Board Paneling	Thin Brick-Stucco-Plaster	Metal Sheath	Wood Shingle-Composition (5)	Plywood-Plastic-Board Paneling	Thin Brick-Stucco-Plaster	Metal Sheath	Concrete Block	Tile	Brick Stone Concrete	Steel
Knob, S	Under 30° Angle	2-1/2" x #18 FH Screw	3" x #18 FH Screw	3" x #18 FH Screw	2-1/2" x #18 FH Screw	2-1/2" x #18 FH Screw	3" x #18 FH Screw	3" x #18 FH Screw	2-1/2" x #18 FH Screw				
	Over 30° Angle	5/16" Angle Screw	5/16" Angle Screw	3/8" Angle Screw	5/16" Angle Screw	5/16" Angle Screw	5/16" Angle Screw	3/8" Angle Screw	5/16" Angle Screw				
Knob, C		2-1/2" x #10 RH Screw	3" x #10 RH Screw	3-1/2" x #10 RH Screw	2-1/2" x #10 RH Screw	Note 6	Note 6	Note 6	Note 6				
Bracket, House		2" x #14 RH Screw	2" x #14 RH Screw	2-1/2" x #14 RH Screw	2" x #14 RH Screw	Note 6	Note 6	Note 6	Note 6				
Bracket, Corner		2" x #14 RH Screw	2" x #14 RH Screw	2-1/2" x #14 RH Screw	2" x #14 RH Screw	2" x #14 RH Screw	2" x #14 RH Screw	2-1/2" x #14 RH Screw	2" x #14 RH Screw	3/16" x 4" Toggle	3/16" x 4" Toggle	2" x #14 RH Screw	3/16" x 4" Toggle
Screweye, Insulated		1" Shank	1" Shank	2" Shank	1" Shank	Note 6	Note 6	Note 6	Note 6				
Ring, Bridle, Drive		Note 6	Note 6	Note 6	Note 6	Note 7	Note 7	Note 6	Note 7	Drive Anchor	Note 6	Drive Anchor	Note 6
Ring, Bridle, Screw		Note 6	Note 6	Note 6	Note 6	Note 7	Note 7	Note 6	Note 7	Expansion Anchor	Note 6	Expansion Anchor	Note 6
Hook, Drop Wire		Note 6	Note 6	Note 6	Note 6	2" x #14 RH Screw	2" x #14 RH Screw	2" x #14 RH Screw	2" x #14 RH Screw	1/4" x 4" Toggle	1/4" x 4" Toggle	2" x #18 RH Screw	1/4" x 3" Toggle
Hook, House		Note 6	Note 6	Note 6	Note 6	2" x #14 RH Screw	2" x #14 RH Screw	2" x #14 RH Screw	2" x #14 RH Screw	Expansion Anchor	Note 6	Expansion Anchor	Note 6
Ring, Bridle, Toggle										3/16" x 4" Toggle	3/16" x 4" Toggle	Note 6	3/16" x 4" Toggle
Clamp, One Hole, Offset or closed "U" Cable Strap		Note 6	Note 6	Note 6	Note 6	3/4" x #6 RH Screw	3/4" x #6 RH Screw	3/4" x #6 RH Screw	3/4" x #6 RH Screw	1" x #6 RH Screw	1/8" x 4" Toggle	1" x #6 RH Screw	1/2" x #6 SM Screw

Notes: ¹ Screw dimensions are minimum. Where appropriate, either or both dimensions shall be increased. All wood screws for exterior use shall be stainless steel. All other exterior metal devices shall be stainless steel, zinc coated steel, silicon bronze, or corrosion resistant aluminum alloy.

² Toggle bolt dimensions are minimum. Where appropriate, either or both dimensions shall be increased.

³ All devices should be attached to studding.

⁴ Screw-type devices shall be secured by means of expansion-type anchors. Equivalent manual or machine-driven devices may be used. Where toggle bolts are specified equivalent devices may be used.

⁵ Pilot holes shall be provided for screws and bridle rings in shingles and drowsiding.

⁶ Attachment device not applicable.

⁷ Attachment device applicable but no separate fastening device required.

⁸ To convert English units to Metric units use 1 in. = 25.4 mm.

(ff) Fastener spacings for vertical and horizontal runs on frame or masonry buildings shall not be more than 6 ft (2 m) apart. Fasteners should be spaced close enough to prevent the aerial service wire from "slapping" against the building during windy conditions.

(gg) When it is necessary to pass behind or around obstructions such as downspouts and vertical conduits, the aerial service wire shall be supported firmly with attachment devices placed

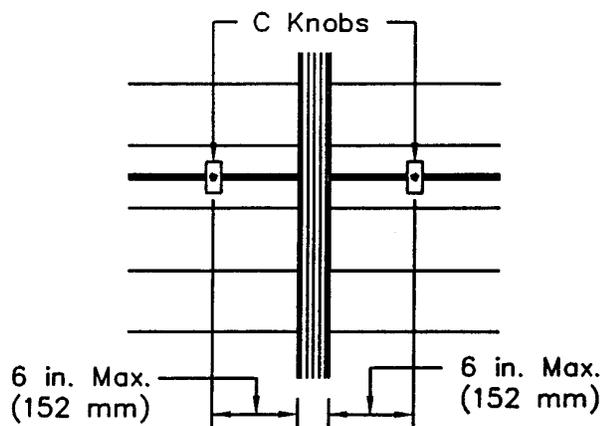
not more than 6 in. (152 mm) from the obstruction as illustrated in Figures 4 and 5 of paragraph (hh) of this section. Preferably, the aerial service wire should be routed behind obstructions to minimize the possibility of mechanical damage to the aerial service wire in the event repair work to the obstruction is required.

(hh) When passing around building projections of masonry or wood or around corners, aerial service wires shall be installed as illustrated in Figures 5 and 6. Figures 4, 5, and 6 are as follows:

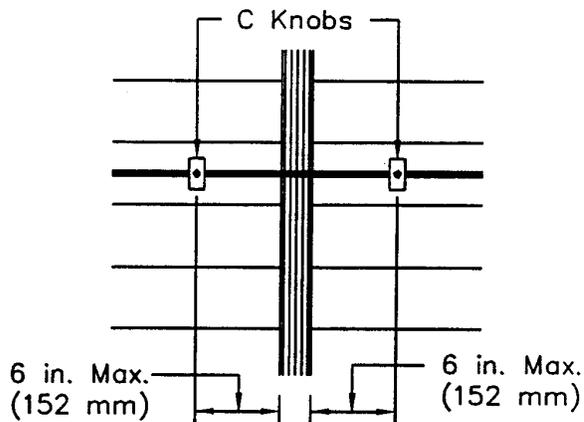
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FIGURE 4

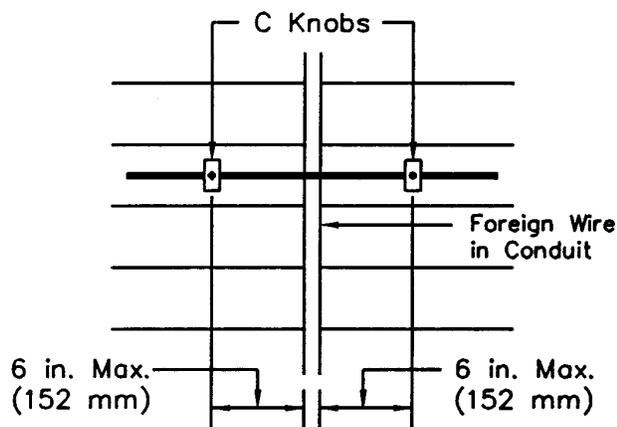
AERIAL SERVICE WIRE CROSSING OBSTRUCTIONS
WOODEN BUILDING SURFACES



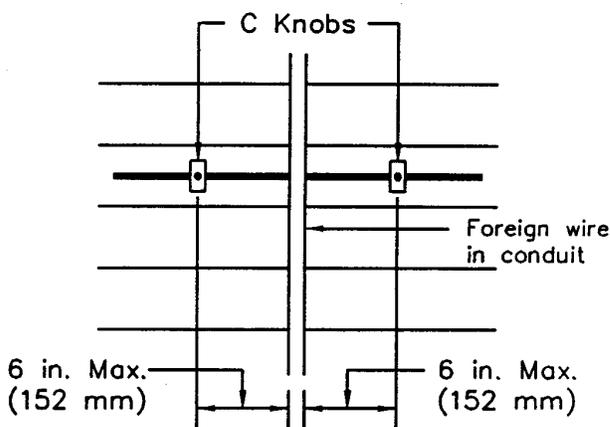
SKETCH A: PASSING BEHIND DRAIN SPOUT
(PREFERRED INSTALLATION METHOD)



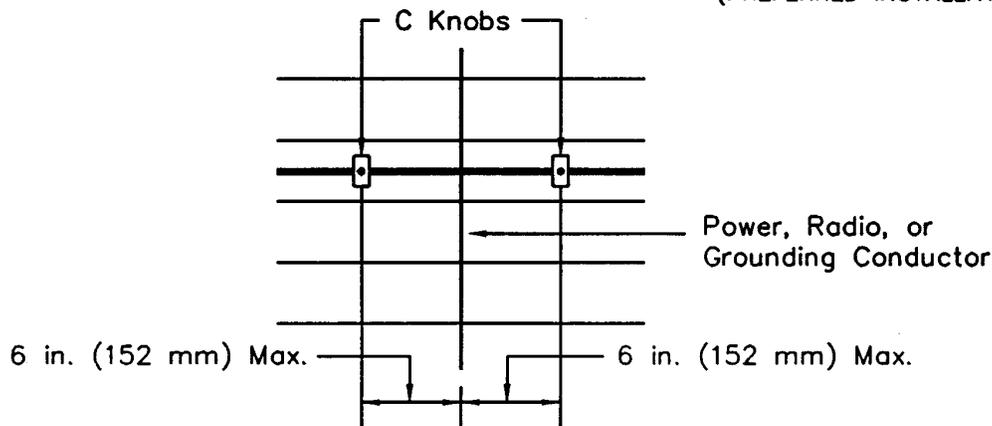
SKETCH B: PASSING IN FRONT OF DRAIN SPOUT



SKETCH C: CROSSING IN FRONT OF CONDUIT



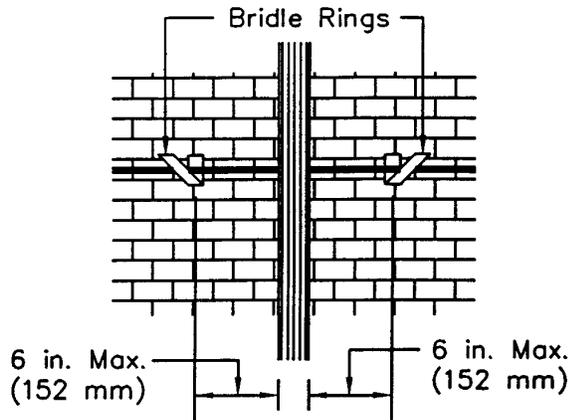
SKETCH D: CROSSING BEHIND CONDUIT
(PREFERRED INSTALLATION METHOD)



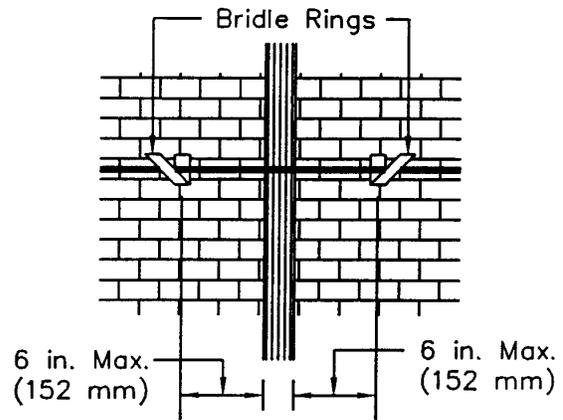
SKETCH E: PASSING POWER, RADIO, OR GROUNDING CONDUCTOR

FIGURE 5

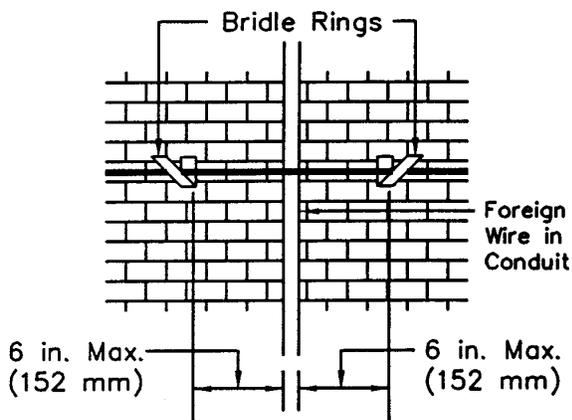
AERIAL SERVICE WIRE CROSSING OBSTRUCTIONS MASONRY BUILDING SURFACES



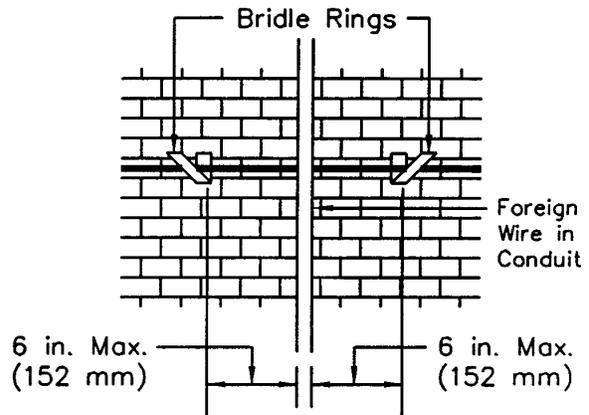
SKETCH A: PASSING BEHIND DRAIN SPOUT
(PREFERRED INSTALLATION METHOD)



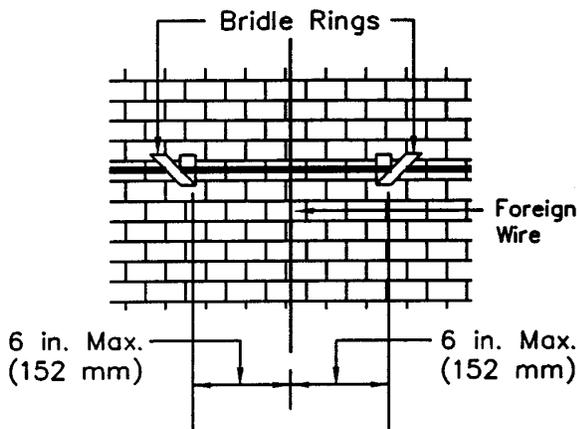
SKETCH B: PASSING IN FRONT OF DRAIN SPOUT



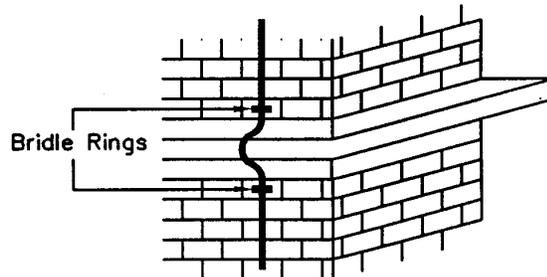
SKETCH C: CROSSING IN FRONT OF CONDUIT



SKETCH D: CROSSING BEHIND CONDUIT
(PREFERRED INSTALLATION METHOD)



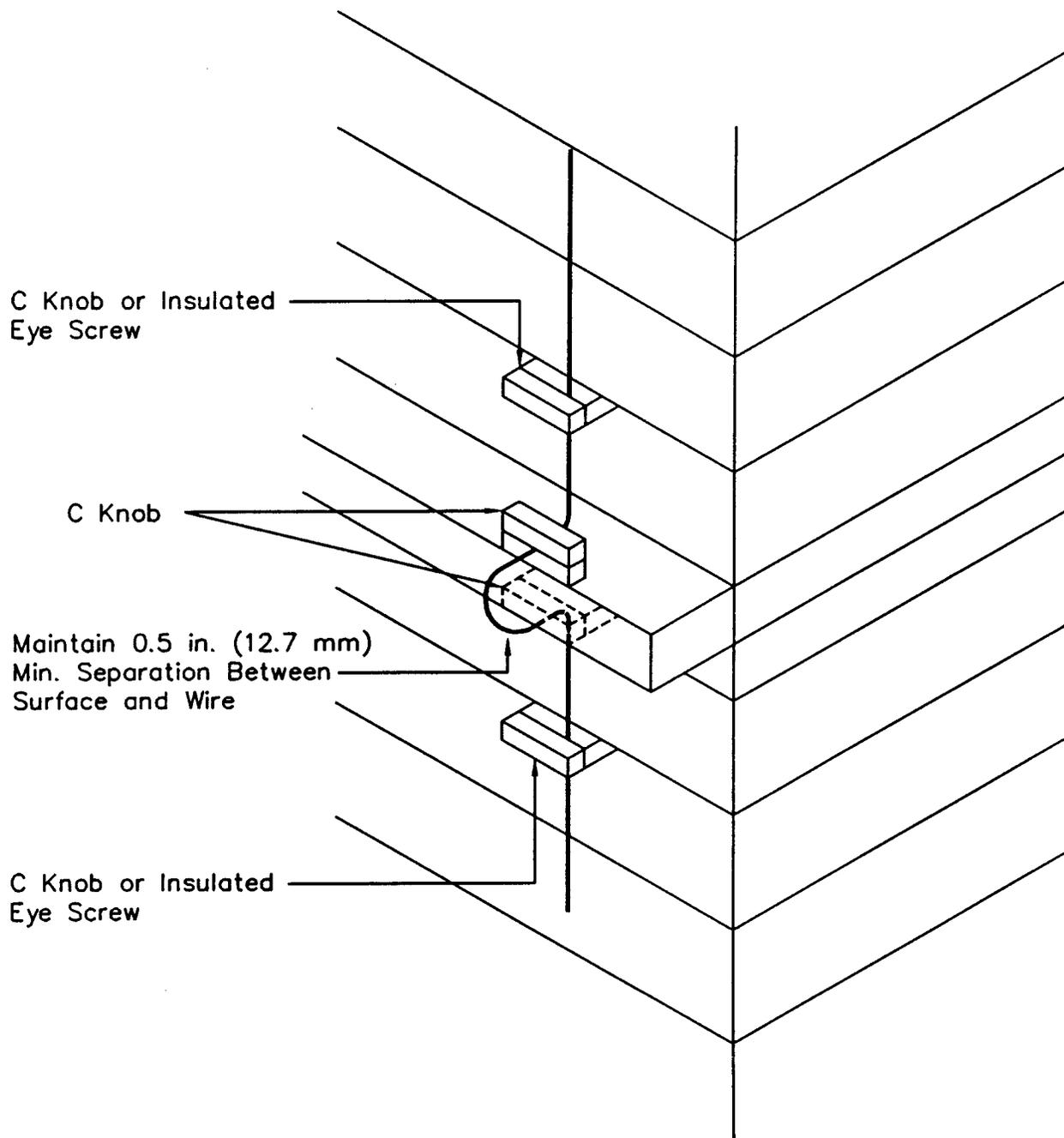
SKETCH E: PASSING BEHIND FOREIGN WIRE
(PREFERRED INSTALLATION METHOD)



SKETCH F: MASONRY BUILDING PROJECTIONS

FIGURE 6

AERIAL SERVICE WIRE CROSSING COMBUSTIBLE BUILDING PROJECTIONS



(ii) In areas where ice and snow conditions are severe, aerial service wires shall be located so that ice and snow falling from the roof will not strike the wires. However, where aerial service wires must pass under the sloping part of the roof, first attachments shall be made as close as practicable to the eaves.

(jj) If two aerial service wire spans are required to the same building, the first attachment shall be such that both aerial service wires can be attached at the same attachment device. Refer to construction drawing 508-1 contained in § 1755.510. Where more than two aerial service wires are required, additional attachment devices in the same general location on the building shall be used.

(kk) When two or more aerial service wire runs are required on the same building they shall share the same type of attachment devices.

(ll) Aerial service wire entrances to buildings shall conform to sketch B of construction drawing 510-2 contained

in § 1755.510, unless the entrance is made through a conduit.

(mm) When the aerial service wire approaches the entrance hole from above, a 1.5 in. (40 mm) minimum drip loop shall be formed in accordance with sketch B of construction drawing 510-2 contained in § 1755.510.

(nn) If an entrance conduit which slopes upward from outside to inside is available and suitably located, it shall be used for the aerial service wire entrance.

§ 1755.507 Aerial cable services.

(a) Where more than six pairs are needed initially, and where an aerial service is necessary, the service shall consist of 22 AWG filled aerial cable of a pair size adequate for the ultimate anticipated service needs of the building. The cable shall comply with the requirements of § 1755.390, RUS Specification for Filled Telephone Cables, and shall be RUS accepted or RUS technically accepted.

(b) Aerial cable services shall be constructed in accordance with specific

installation specifications prepared by the RUS borrower or the engineer delegated by the borrower.

(c) Unless otherwise specified in the installation specifications, aerial cable service installations shall meet the following requirements:

(1) Strand supported lashed construction shall be used.

(2) Where practicable a $\frac{5}{16}$ in. (8 mm) utility grade strand and automatic clamps shall be used in slack spans to avoid damage to the building.

(3) Construction on poles shall comply with applicable construction drawings for regular line construction. Aerial service cable shall be spliced to the main cable in accordance with § 1755.200, RUS standard for splicing copper and fiber optic cables.

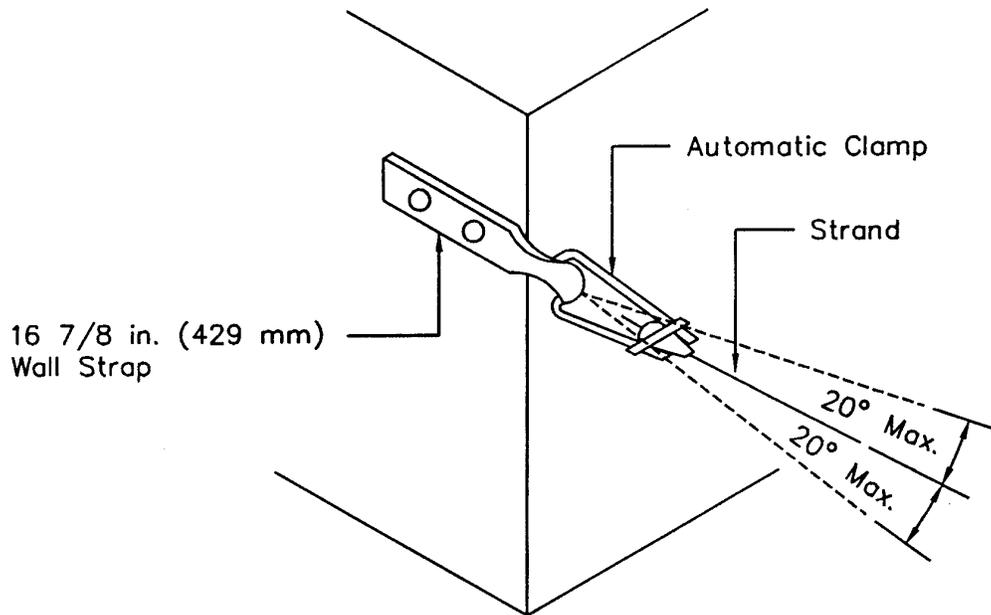
(4) Where practicable, aerial cable shall pass under electrical guys, distribution secondaries, and services.

(5) The suspension strand shall be attached to the building by wall brackets as indicated in Figure 7 as follows:

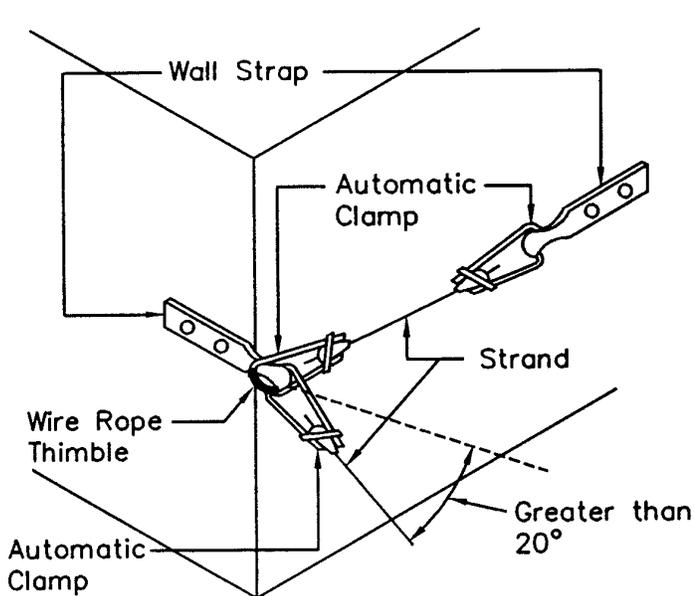
BILLING CODE 3410-15-P

FIGURE 7

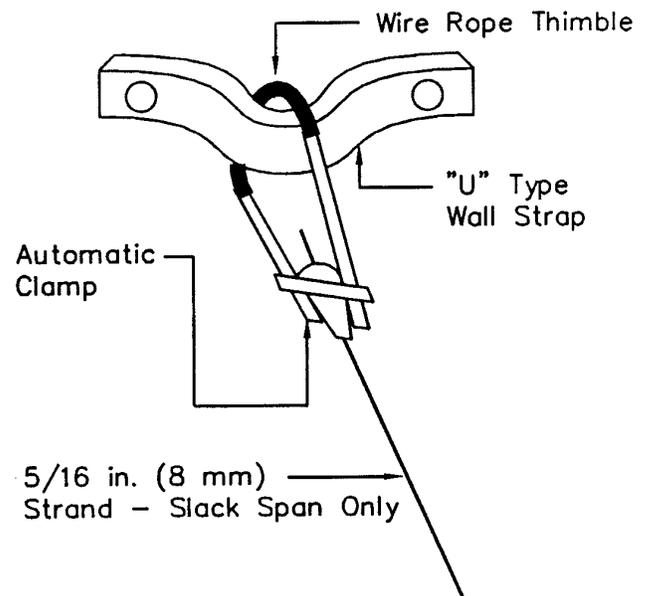
SUSPENSION STRAND DEADENDING ON BUILDINGS



SKETCH A: PULL ALONG LINE OF BUILDING WALL



SKETCH B: ANGLE PULL FROM BUILDING WALL



SKETCH C: PULL FROM FACE OF WALL

(i) If taut spans are necessary, appropriate size strand may be used if the pull is in line with one wall of the building, or within 20 degrees of being in line as illustrated in sketch A of Figure 7. If the angle of pull is greater than 20 degrees from the building, the wall bracket shall be reinforced against pullout by an arrangement equivalent to sketch B of Figure 7. Taut spans may be strung using the recommendations in RUS Bulletin 1751F-630, Design of Aerial Plant. The same tension as would be used in normal line construction so as not to exceed 60 percent of the breaking strength of the strand under maximum loading shall be used. Taut spans shall not exceed 100 ft (30.5 m) in length and the cable weight shall not exceed 1 pound/foot (lb/ft) [1.5 kilogram/meter (kg/m)] except when equivalent combinations of greater span lengths with cable weight less than 1 lb/ft (1.5 kg/m) are permissible. Copies of RUS Bulletin 1751F-630 are available upon request from RUS/USDA, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522, FAX (202) 690-2268.

(ii) When an attachment must be made to the face of a building wall away from a corner, a "U" type wall bracket shall be used as indicated in sketch C of Figure 7 of this paragraph (c)(5). Only slack span construction with $\frac{5}{16}$ in. (8 mm) utility grade strand shall be permitted in this situation. The bail of the automatic clamp shall be protected by a wire rope thimble.

(6) Aerial cable shall be located on the rear or side of the building and shall be run only in a horizontal or a vertical direction. The cable route shall be selected so as to avoid building projections and obstructions to the extent practicable.

(7) Cable attachment devices shall be located in solid masonry or in studs of wood frame buildings. Sheet surface materials may be used only where they are reinforced by substantial backing material which the attachment services can penetrate.

(8) The minimum separation on or in buildings between cable and other facilities shall be as indicated in § 1755.505(f)(8), Table 1.

(9) On horizontal runs, place cable clamps so that the attachment shall be made below the cable. On vertical runs place the cable clamps so that the attachment shall be made on the same side as horizontal runs. Cable clamps shall be placed on the inside of cable bends.

(10) On horizontal runs, cable clamps shall be placed not more than 16 in. (400 mm) apart for cable diameters equal to or greater than 1 in. (25.4 mm)

and 24 in. (600 mm) apart for cable diameters less than 1 in. (25.4 mm).

(11) On vertical runs, cable clamps shall be approximately 24 in. (600 mm) apart for all sizes of cable.

(12) For the cable entrance, holes shall be bored slightly larger in diameter than the cable and shall slope upward from outside to inside. A duct sealer having RUS acceptance or RUS technical acceptance shall be applied to both ends of the hole after the cable is pulled in.

(13) Section 1755.505 (g) and (h) shall also apply to aerial cable services.

§ 1755.508 Customer access location protection.

(a) All customer access locations shall be protected.

(b) Customer access location protection shall consist of installing the telecommunications facilities with proper clearances and insulation from other facilities, providing primary voltage limiting protection, fuse links, NIDs, BETs, or fused primary station protectors, if required, and adequate bonding and grounding.

(c) All NIDs shall be RUS accepted or RUS technically accepted or the RUS borrower shall obtain RUS regional office approval on a case by case basis as applicable.

(d) All BETs shall be RUS accepted or RUS technically accepted.

(e) All fused primary station protectors shall be RUS accepted or RUS technically accepted.

(f) NIDs, BETs, or fused primary station protectors shall be mounted outside for all applications except for those described in paragraphs (g) introductory text through (g)(3) of this section.

(g) NIDs, BETs, or fused primary station protectors may be mounted inside when:

(1) Large buildings are to be served and the customer requests an inside installation;

(2) Buried alarm circuits are requested by the subscriber; or

(3) The customer requests an all buried installation for appearance or to prevent the drilling of holes in aluminum or vinyl siding.

(h) Outside mounted NIDs, BETs, or fused primary station protectors shall be easily accessible and shall be located between 3 to 5 ft (1 to 1.5 m) above final grade.

(i) The locations of NIDs, BETs, or fused primary station protectors shall be selected with emphasis on utilizing the shortest primary station protector grounding conductor practicable and on grounding of the telecommunications primary station protector to the electric

service grounding system established at the building served utilizing electrodes (3) through (7) cited in Section 800-40(b)(1) of the ANSI/NFPA 70-1996, *NEC*[®]. *The National Electrical Code*[®] and *NEC*[®] are registered trademarks of the National Fire Protection Association, Inc., Quincy, MA 02269. The ANSI/NFPA 70-1996, *NEC*[®], is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101, telephone number 1 (800) 344-3555. Copies of ANSI/NFPA 70-1996, *NEC*[®], are available for inspection during normal business hours at RUS, room 2845, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1598, Washington, DC 20250-1598 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) If access to the building electric service grounding system, as referenced in paragraph (i) of this section, is not possible or is not reasonable [telecommunications primary station protector grounding conductor will be longer than 10 ft (3 m)], the NID, BET, or fused primary station protector shall be located as close as practicable to electrodes (1) or (2) cited in Section 800-40(b)(1) of the ANSI/NFPA 70-1996, *NEC*[®].

(k) In addition, the NID, BET, or fused primary station protector shall be located in, on, or immediately adjacent to the structure or building to be served as close as practicable to the point at which the telecommunications service wire attaches to the building, making sure that the telecommunications primary station protector grounding conductor is connected to the *closest*, existing, and accessible electrode, of the electrodes cited in paragraphs (i) or (j) of this section.

(l) For the preferred customer access location installation, the ANSI/NFPA 70-1996, *NEC*[®], permits the telecommunications grounding conductor to be connected to the metallic conduit, service equipment closure, or electric grounding conductor as shown in Figure 8 of paragraph (l)(2) of this section.

(1) Connections to metallic conduits shall be made by ground straps clamped over a portion of the conduit that has been cleaned by sanding down to bare metal.

(2) Connections to metallic service equipment closures shall be made by attaching a connector which is listed for the purpose by some organization acceptable to the local authority (State, county, etc.) per Article 100 of the

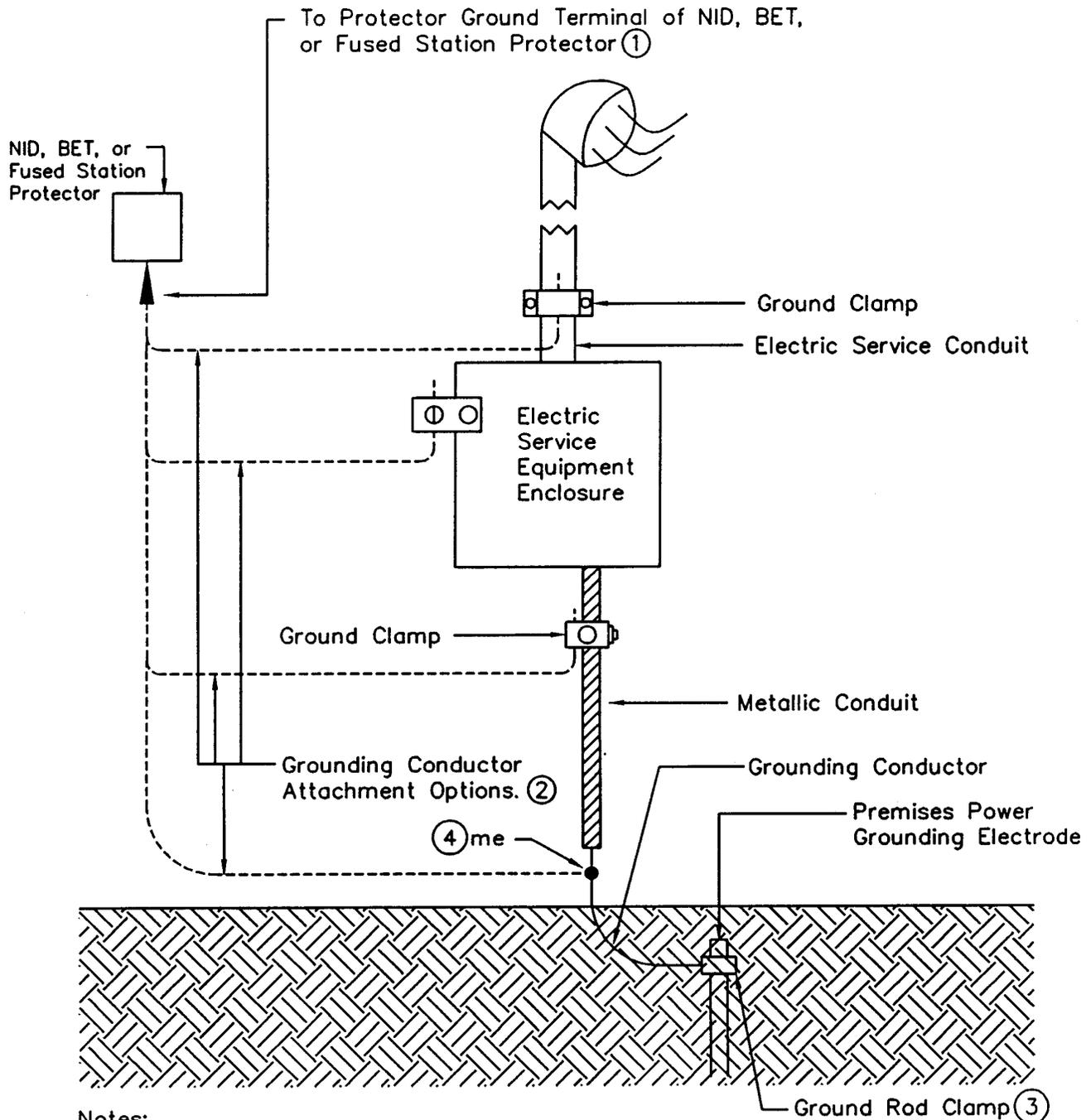
ANSI/NFPA 70-1996, *NEC*[®], definition for "Listed" [for example connectors

listed for the purpose by Underwriters

Laboratories (UL)]. Figure 8 is as follows:

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FIGURE 8

GROUNDING OF TELECOMMUNICATIONS SERVICE TO ELECTRIC SERVICE
(PREFERRED METHOD)**Notes:**

- ①. See Section 800-40(a) of ANSI/NFPA 70-1996 NEC[®]. ②. Select one of the attachment options shown above for the installation. ③. Clamp must be accepted by Listing Agency (UL, etc.). ④. "me" connector must be accepted by a Nationally recognized testing laboratory.

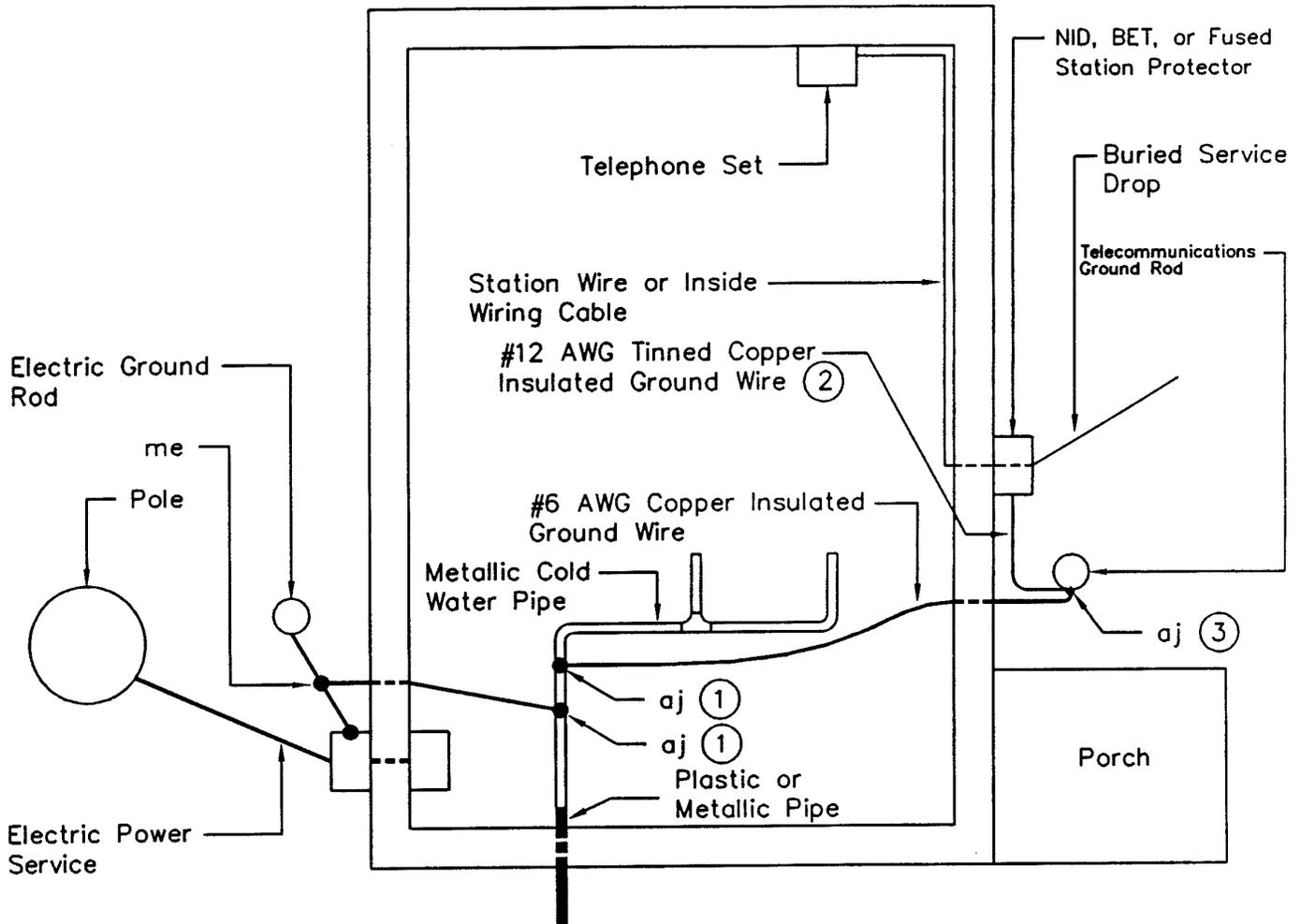
(m) Where it is not possible to accomplish the objective of paragraphs (i), (j), and (k) of this section, interior metallic pipes may be used to the maximum practicable extent to gain access to the electric service ground as shown in Figure 9. Note that the water pipe in Figure 9 is electrically continuous between electric and telecommunications bonds to the cold

water pipe and it is used only as a portion of a bonding conductor and, therefore, does not have to be "acceptable" as a ground electrode but may be floating (isolated from ground by a plastic pipe section). ANSI/NFPA 70-1996, NEC®, requires that metal piping be used as a bonding conductor in this manner only when the connectors to the pipe are within 1.5 m (5 ft) of where the

pipe enters the premises. This is not the preferred installation. The RUS preferred installation has the telecommunications primary station protector grounded directly to an accessible location near the power grounding system. See paragraph (l) of this section. Figure 9 is as follows:

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FIGURE 9

ALTERNATIVE TECHNIQUE FOR BONDING TO ELECTRIC SERVICE GROUND
WHERE DIRECT ATTACHMENT IS NOT POSSIBLE**Notes:**

- ①. Both electric and telephone "aj" connectors attached to the cold water pipe shall be within 5 ft (1.5 m) of where the pipe enters the premises.
- ②. One or two pair service assumed; ground wire must be accepted by a Nationally recognized testing laboratory.
- ③. "aj" connector must be accepted by a Nationally recognized testing laboratory.

(n) Where the telecommunications premises system at a customer's access location is grounded to a separate electrode (of any type) this telecommunications grounding electrode must be bonded to the electric grounding system with a No. 6 AWG or larger copper insulated grounding conductor. Bonding of separate electrodes is a requirement of the ANSI/NFPA 70-1996, NEC®.

(o) The NID, BET, or fused primary station protector pair size shall be adequate for the number of lines anticipated within five years.

(p) When lightning damage is considered probable or customer access locations are remote from the borrower's headquarters, use of maximum duty gas tube primary station protectors incorporated in NIDs, BETs, or fused primary station protectors shall be considered. (See RUS TE&CM 823, Electrical Protection by Use of Gas Tube Arresters). Copies of RUS TE&CM 823 are available upon request from RUS/USDA, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522, FAX (202) 690-2268.

(q) NIDs or BETs incorporating fuseless station protectors shall always be used in preference to fused station

protectors or BETs incorporating fused protectors, when in the judgment of the RUS borrower or the engineer delegated by the RUS borrower, the requirements of the ANSI/NFPA 70-1996, NEC®, for fuseless station protectors can be met.

(r) A fuse link consisting of a copper conductor two gauges (AWG) finer (numerically higher) conductivity than the aerial service wire shall be provided between the cable and aerial service wire where NIDs or BETs incorporating fuseless station protectors are used. Thus for a 22 AWG drop, a fuse link of No. 24 AWG or finer copper wire shall be provided. If the cable circuit is No. 24 gauge or finer, the cable conductors serve as the fuse link for the 22 AWG aerial service wire and no separate fuse link is necessary. (Note: The fuse link or the facilities serving as the fuse link must be located between the telecommunications facilities that are exposed to possible power cross and the customer drop where there is no exposure to possible power cross.)

(s) RUS's buried plant practices require buried main line plant to be protected against power contacts to aerial plant extensions and aerial inserts by No. 24 AWG fuse links at every buried-aerial junction.

(t) In aerial cable plant, fuse links are usually provided by 24 AWG leads on filled terminal blocks regardless of the gauge of the cable conductors. This practice is acceptable if the ampacity of the aerial service wire is sufficiently higher than the fuse link's ampacity.

(u) The grounding and bonding of each NID, BET, or fused primary station protector shall be selected by consulting paragraphs (i) through (n) of this section. The "first choice" assembly unit shall be selected whenever the prevailing conditions make its use practicable. The NID, BET, or fused primary station protector assembly unit selected shall be installed in accordance with the appropriate construction drawing specified in RUS Bulletin 345-154 (RUS Form 515g), Specifications and Drawings for Service Entrance and Station Protector Installation. Copies of RUS Bulletin 345-154 are available upon request from RUS/USDA, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522, FAX (202) 690-2268.

(v) The minimum size grounding conductor that can be used with a single NID; a group of NIDs; a multipair NID; fused protector; or BET shall be in accordance Table 5, as follows:

TABLE 5.—GROUNDING CONDUCTOR SIZE VERSUS NUMBER OF CIRCUITS

Minimum Grounding Conductor Size	Number of circuits	
	Fuseless (carbon or gas tube)	Fused
#12 AWG, copper, insulated	1 to 2	1 to 3.
#10 AWG, copper, insulated	3 to 5	4 to 7.
#6 AWG, copper, insulated	6 or more	8 or more.

(w) Grounding conductor runs between the NID, BET, or fused station protector and the ground electrode shall conform to the following:

- (1) The shortest, most direct route practicable shall be used;
- (2) Sharp bends in the grounding conductor shall be avoided during installation;
- (3) No splices shall be made in the grounding conductor;
- (4) Grounding conductors shall not be fished through walls, under floors, or placed in bridle rings or any metal conduit unless the grounding conductor is bonded to the conductor at both ends of the metallic conduit;
- (5) Grounding conductor runs from an outside mounted NID, BET, or fused station protector to an inside ground electrode shall use the same entrance as the station wire; and

(6) Grounding conductor runs from an outside mounted NID, BET, or fused station protector to an outside ground electrode at the building shall be attached to the exterior surface of the building or buried. If buried, the grounding conductor shall be either plowed or trenched to a minimum depth of 12 in. (300 mm). When trenched, the trenches shall be as close to the side of the building as practicable, backfilled, and tamped to restore the earth to its original condition.

(x) Telecommunications grounding connectors shall be RUS accepted or RUS technically accepted. Grounding and bonding conductors shall be made of copper. Where the grounding and bonding conductors must be connected to aluminum electric service grounding conductors, bimetal grounding connectors shall be used.

(y) Grounding conductor attachments shall conform to the following:

- (1) Galvanized nails or clamps, or nickel-copper alloy staples shall be used for grounding conductor attachments in accordance with Table 6 in paragraph (y)(3) of this section.
- (2) Grounding conductors, station or buried service wires in parallel runs may share the same fastening device when the device is specifically designed for two wires. See Table 6 in paragraph (y)(3) of this section for station wire and grounding conductor fasteners; and
- (3) Grounding conductor fasteners shall be placed 12 to 18 in. (300 to 450 mm) apart on straight runs and 2 to 4 in. (50.8 to 100 mm) apart at corners and at bends. Table 6 is as follows:

Table 6

TYPICAL FASTENING DEVICES FOR STATION WIRES AND GROUNDING CONDUCTORS (9)

TYPE AND GAUGE OF WIRE	APPROX. OVERALL DIAMETER	TYPES OF FASTENING DEVICES FOR VARIOUS TYPES OF BUILDINGS OR WALL FINISHES							
		Hard Woods	Soft Woods	Wallboard, Plaster on Wood, or Metal Lath, or Concrete Block(3)	Brick, Stone or Concrete(3)	Shingles and Siding(4)	Sheet Metal(5)	Wall Tile(3)	
#22 AWG Station Wire	.125 in. to .155 in.	A1, D7, E1, F1, G1	A2, A3, D8, E2, F2, G2	D8, D9, E2, E3, G2, G3	D8, E2, G2	A2, A3, D7, D8, E2, F2	D7, D8, D9, G1, G2, G3, H1	D8, D9, E2, E3, G2, G3, H1	
GROUNDING CONDUCTOR	#10 AWG Insulated Wire	.168 in.	A1, B1, D1	A2, A3, B1, B2, D2	B2, D2, D3	B2, D2	A2, A3, B1, B2, D1, D2	D1, D2, D3, H2	B2, D2, D3, H2
	#12 AWG Insulated Wire	.127 in.	A1, B1, C1, E1, F1, D7, G1	A2, B1, B2, C1, C2, D8, E2, F2, G2	B2, C2, C3, D8, D9, E2, E3, G2, G3	B1, B2, C2, D8, E2, E3, G2	A2, A3, B1, B2, C1, C2, D8, E2, F2, G2	C1, C2, C3, D7, D8, D9, E1, E2, E3, G1, G2, G3, H1	B2, B3, C3, D8, D9, E2, E3, G2, G3, H1
	#6 AWG Insulated Wire	.290 in.	A2, A3, B1, D4	A3, B2, D5	B2, D5, D6	B2, D5	A3, B2, D5	D4, D5, D6, H3	B2, D5, D6, H3

EXPLANATION OF FASTENER CODES

A. Staple Machine, Round Crown, Interior Use Only - (Note 6)

1. 3/16" or 1/4" Crown - 3/8" Leg
2. 3/16" or 1/4" Crown - 7/16" or 9/16" Leg
3. 3/16" or 1/4" Crown - 9/16" Leg

B. Nail, Ground Wire, Single Shank Galvanized, Interior and Exterior Use

1. 7/8" #14
2. 1-3/8" #13

C. Clamp, Ground Wire, One Hole, Galvanized, Interior and Exterior Use

1. Type B-1/2" x #6 RH Screw (1)
2. Type B-3/4" x #6 RH Screw (1)
3. Type B-1/8" x 3" Toggle Bolt (2)

D. Clamp, One Hole Offset, Galvanized or Enameled, Interior and Exterior Use - (Note 7)

Wire Size		Fasteners (1), (2)
Min.	Max.	
1. 5/32" to 7/32"	1/2"	#6 RH Screw
2. 5/32" to 7/32"	3/4"	#6 RH Screw
3. 5/32" to 7/32"	1/8" x 3"	Toggle Bolt
4. 1/4" to 5/16"	1/2"	#6 RH Screw
5. 1/4" to 5/16"	1"	#6 RH Screw
6. 1/4" to 5/16"	1/8" x 3"	Toggle Bolt
7. 1/8" to 5/32"	1/2"	#6 RH Screw
8. 1/8" to 5/32"	3/4"	#6 RH Screw
9. 1/8" to 5/32"	1/8" x 3"	Toggle Bolt

E. Clamp, Station Wiring, One Hole, Galvanized or Enameled, Interior and Exterior Use - (Note 7)

1. Type B-1/2" x #6 RH Screw (1)
2. Type B-3/4" x #6 RH Screw (1)
3. Type B-1/8" x 3" Toggle Bolt (2)

F. Nail, Station Wiring, Galvanized or Enameled, Interior and Exterior Use - (Note 7)

1. Type B - 1/2"
2. Type B - 7/8"

G. Clamp, One Hole Double - (Note 8)

Wire Size		Fasteners
Min.	Max.	
1. Two 1/8" to 5/32"	3/4"	#6 RH Screw(1)
2. Two 1/8" to 5/32"	1"	#6 RH Screw(1)
3. Two 1/8" to 5/32"	1/8" x 3"	Toggle Bolt(2)

H. Station Wire Clip, Adhesive Backed, Interior Use Only -

- | Wire Size |
|------------------|
| 1. 1/8" Nominal |
| 2. 3/16" Nominal |
| 3. 1/4" Nominal |

Notes: ¹ Screw dimensions are minimum. Where appropriate, either or both dimensions shall be increased. All wood screws for exterior use shall be stainless steel. All other exterior metal devices shall be stainless steel, zinc coated steel, silicon bronze, or corrosion resistant aluminum alloy.

² Toggle bolt dimensions are minimum. Where appropriate, either or both dimensions shall be increased.

³ Wall screw anchors may be used in wall board, plaster or tile walls. Screws and nails in masonry shall be secured by means of expansions type anchors. Equivalent manual or machine-driven devices may be used. Where toggle bolts are specified, equivalent devices may be used.

⁴ Lead holes shall be drilled for screws, nails, and bridle rings in shingles and drop siding.

⁵ Sheet metal screws shall be used except where toggle bolts are required. Where wood sheathing under sheet metal siding is encountered, the sheet metal may be drilled or punched and a wood screw used.

⁶ Machine-driven staples of nickel-copper composition may be used for exterior wiring.

⁷ Galvanized clamps and wiring nails may be used for exterior and interior wiring. Enameled clamps shall be used for interior wiring only. Where toggle bolts or equivalent devices require holes in the structure larger than the clamp being fastened, a suitable washer of sufficient size to cover the hole must be used under the clamp.

⁸ Double clamp may be used where two #22 AWG station wires, two #12 AWG grounding conductors, or one #22 AWG station wire and one #12 grounding conductor parallels one another.

⁹ For converting English units to Metric units use 1 in. = 25.4 mm.

(z) Grounding conductors shall be separated from non-telephone company wires in accordance with Section 800-12(b) of the ANSI/NFPA 70-1996, *NEC*[®].

(aa) Grounding conductors run through metal conduits shall be bonded to the conduit at each end. RUS accepted and RUS technically accepted pipe type ground clamps and grounding connectors shall be used for bonding.

(bb) Where NID, BET, or fused station protector assembly units require grounding conductor connections to pipe systems, the following apply:

(1) The connection shall be made to a cold water pipe of an operating water system;

(2) The connection point shall be preferably inside the building;

(3) Allow a minimum of 6 in. (152 mm) between the last fastener and the point where the grounding conductor first touches the water pipe;

(4) Leave 2 in. (50.8 mm) of slack in the grounding conductor to avoid breaking the conductor at the terminating point. Tape the grounding

conductor to the pipe where possible to avoid movement. In no case, shall the grounding conductor be coiled or wrapped around the pipe;

(5) The pipe shall be cleaned with fine sand paper to make a good electrical connection. Care should be taken to avoid damaging the pipe while cleaning it;

(6) Attach the pipe grounding conductor connector to the cleaned area of pipe and tighten. Care shall be exercised to avoid deforming, crushing, or otherwise damaging the pipe. A simple continuity check with an ohmmeter between the connector and the pipe will indicate whether or not a good electrical contact has been made. Set the ohmmeter to "R \times 1" scale to ensure that a low resistance contact is made;

(7) A warning tag shall be attached to the ground clamp with the following or equivalent statement: "Call the telecommunications company if this connector or grounding conductor is loose or must be removed"; and

(8) When the water pipe is used, the ANSI/NFPA 70-1996, *NEC*[®], requires that metal piping be used as a bonding conductor in this manner only when the connections to the pipe are within 5 ft (1.5 m) of where the pipe enters the premises.

(cc) Bonding conductors shall consist of either copper or tinned copper insulated wires of appropriate sizes.

(1) Bonding conductors shall be run and attached in the same manner as grounding conductors.

(2) Attaching and terminating devices for bonding conductors shall be adequate for the size of wire involved. The No. 6 AWG copper insulated conductor or larger shall not be terminated by bending it around a threaded stud.

(dd) Where NID, BET, or fused station protector assembly units require a driven ground rod the following shall apply to the ground rod installation:

(1) Locate the ground rod at least 1 ft (300 mm) from buildings, poles, trees and other obstruction;

(2) Ground rods shall not be installed within 6 ft (2 m) of electric service ground rods (Note: This minimum separation is provided to avoid mutual impedance effects of multiple grounding electrodes that will deleteriously degrade the effective impedance-to-earth if grounding electrodes are installed any closer than 6 ft (2 m) to one another. This requirement is included for special cases where the telecommunications company is not allowed, for some reason, to observe the

RUS preferred grounding method of attaching the primary protector grounding conductor directly to an accessible point on the building electric service grounding system. RUS believes that if the primary protector location can be sited within 6 ft (2 m) of the electric service ground rod then the electric service ground rod could be used as the preferred telecommunications grounding electrode and a separate telecommunications ground rod is unnecessary);

(3) A hole, 15 in. (350 mm) deep and 6 in. (150 mm) in diameter, shall be dug at the location where the ground rod is to be driven;

(4) Where "slip-on" type ground rod clamps are used instead of "clamp-around" type clamps, the ground rod clamps shall be placed onto the rod prior to driving the rod into the ground (Note there should be one clamp for the NID, BET, or fused station protector grounding conductor and one clamp for the telecommunications ground rod to the electric grounding system). However, the clamp shall not be tightened until the rod is completely driven. The end of the rod shall be placed in the bottom of the hole and the rod shall be aligned vertically adjacent to one wall of the hole prior to driving. The rod shall be driven until its tip is 12 in. (300 mm) below final grade. The grounding conductor shall then be attached, the clamp shall be tightened, and hole backfilled. Clamps employed in this manner shall be suitable for direct burial and shall be RUS accepted or RUS technically accepted; and

(5) Where rods are manually driven, a large number of blows from a light hammer (4 lbs [1.8 kg]) shall be used instead of heavy sledgehammer type blows. This should keep the rod from bending.

(ee) Terminations on fuseless primary station protectors incorporated in NIDs and on fused primary station protectors shall be as shown in Figures 10, 11, 12, 13, 14, and 15 of paragraph (ee)(1) of this section. The inner jackets of buried service wires and outer jackets of cables used as service drops shall be extended into the NID or the fused primary station protector. A 10 in. (250 mm) length of each spare wire shall be left in NIDs or fused primary station protectors. The spare wires shall be coiled up neatly and stored in the NID

or fused primary station protector housing.

(1) The shields of buried service wires may be connected to the ground binding post using RUS accepted or RUS technically accepted buried service shield bond connectors as shown in Figure 10 for NIDs and Figure 11 for fused primary station protectors. RUS accepted or RUS technically accepted buried service wire harness wires designed for customer access location installations may also be used for terminating buried service wire shields to the ground binding post of the NID as shown in Figure 12 and Figure 13 for fused primary station protectors. Figures 10 through 13 are as follows:

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FIGURE 10

BONDING BURIED SERVICE WIRE AT STATION PROTECTOR OF NID USING SERVICE WIRE SHIELD BOND CONNECTOR

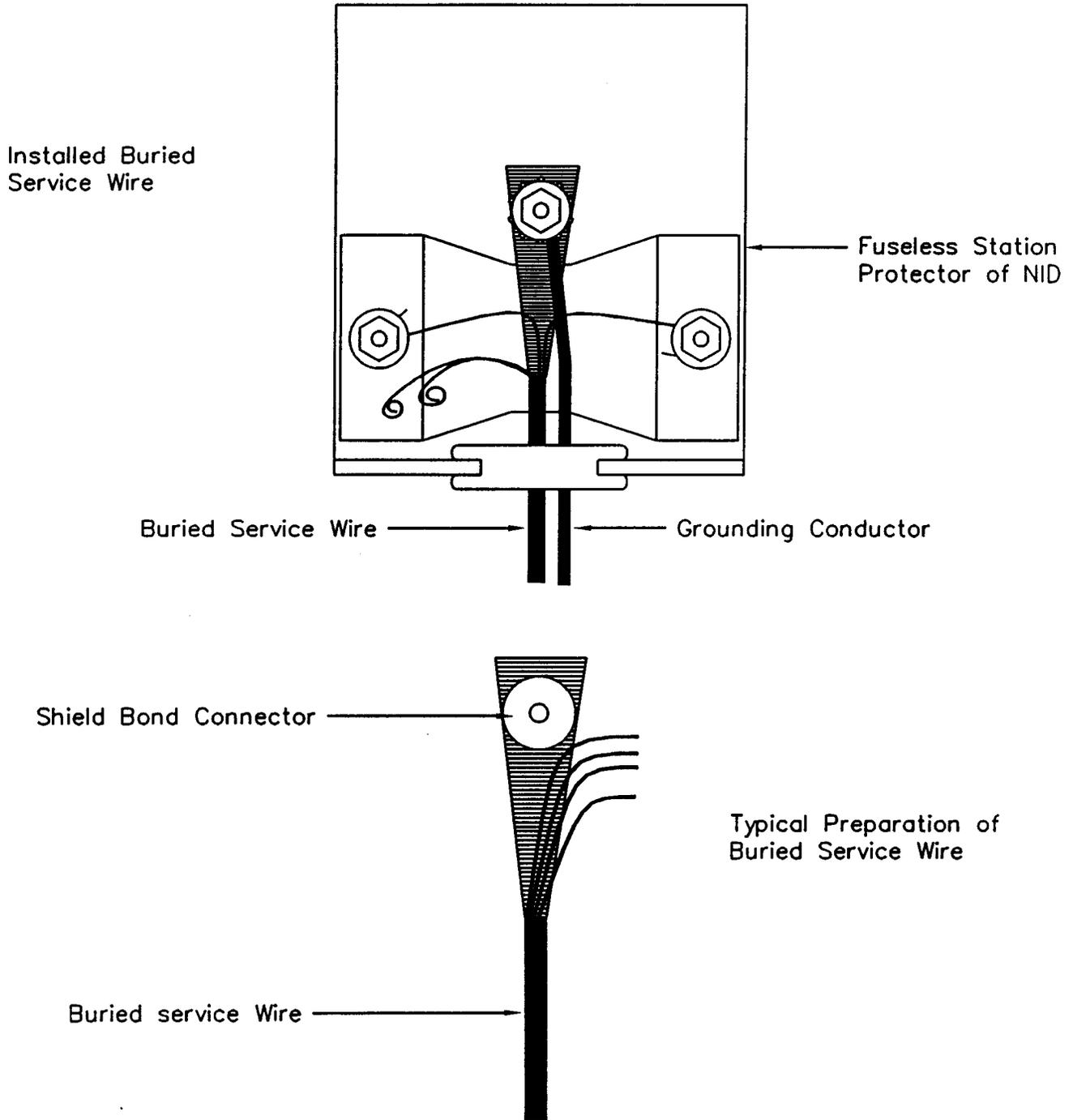


FIGURE 11

BONDING BURIED SERVICE WIRE AT FUSED STATION PROTECTOR USING SERVICE WIRE SHIELD BOND CONNECTOR

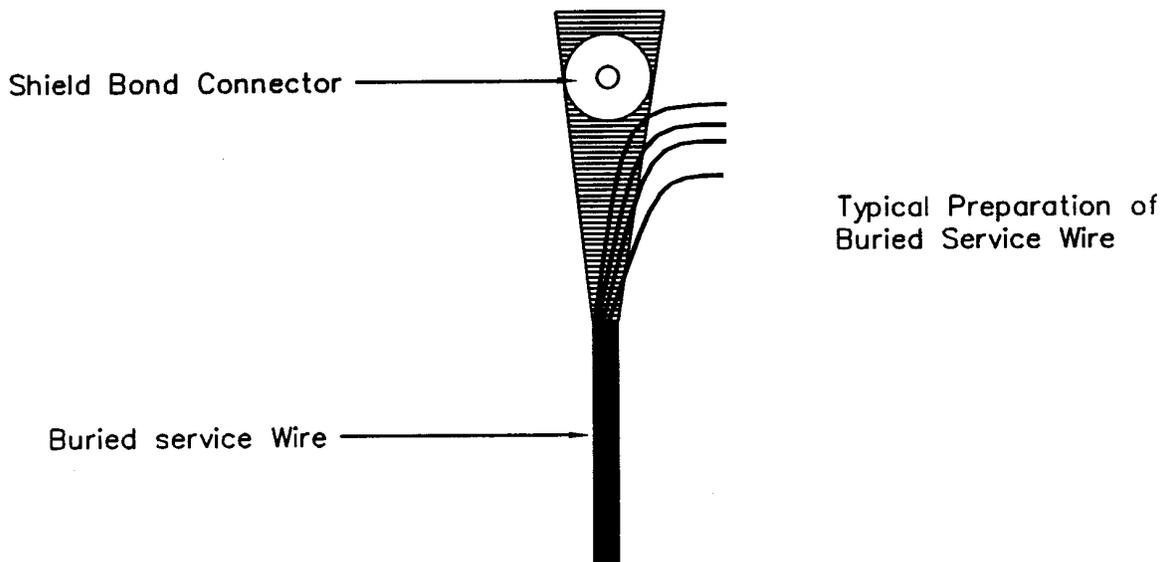
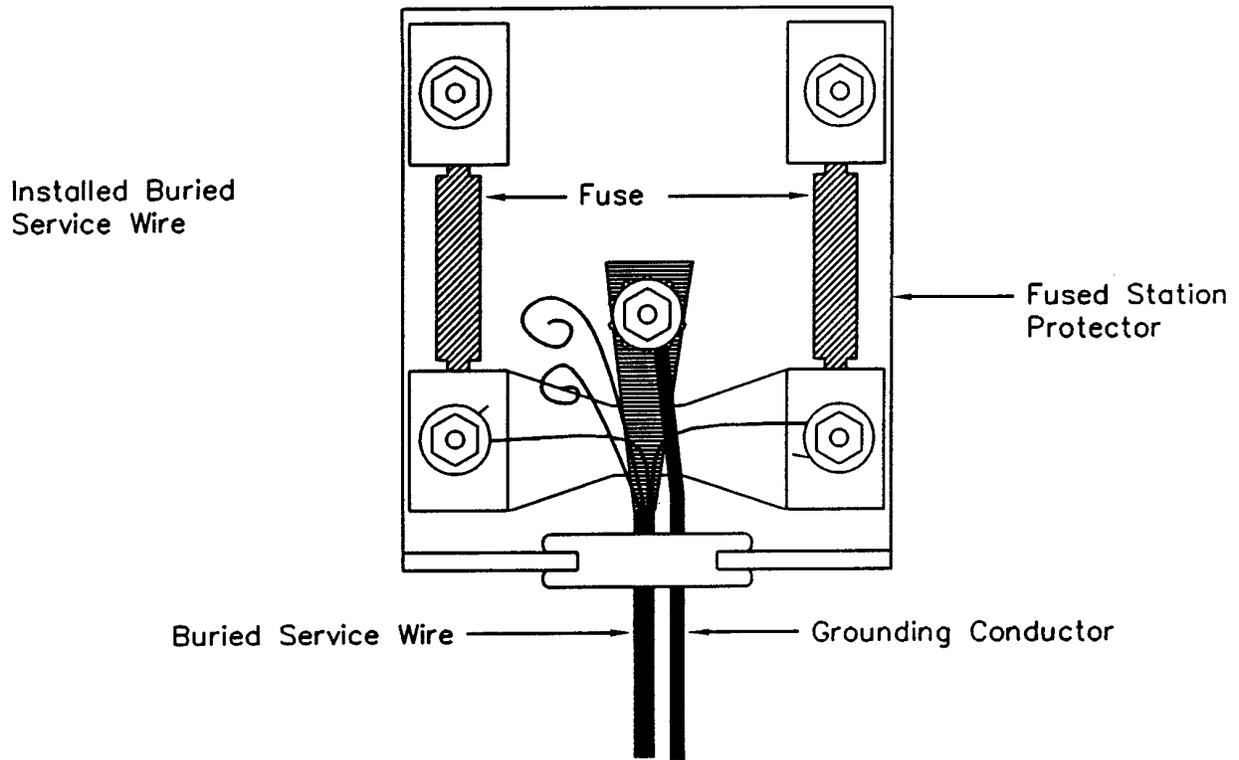


FIGURE 12

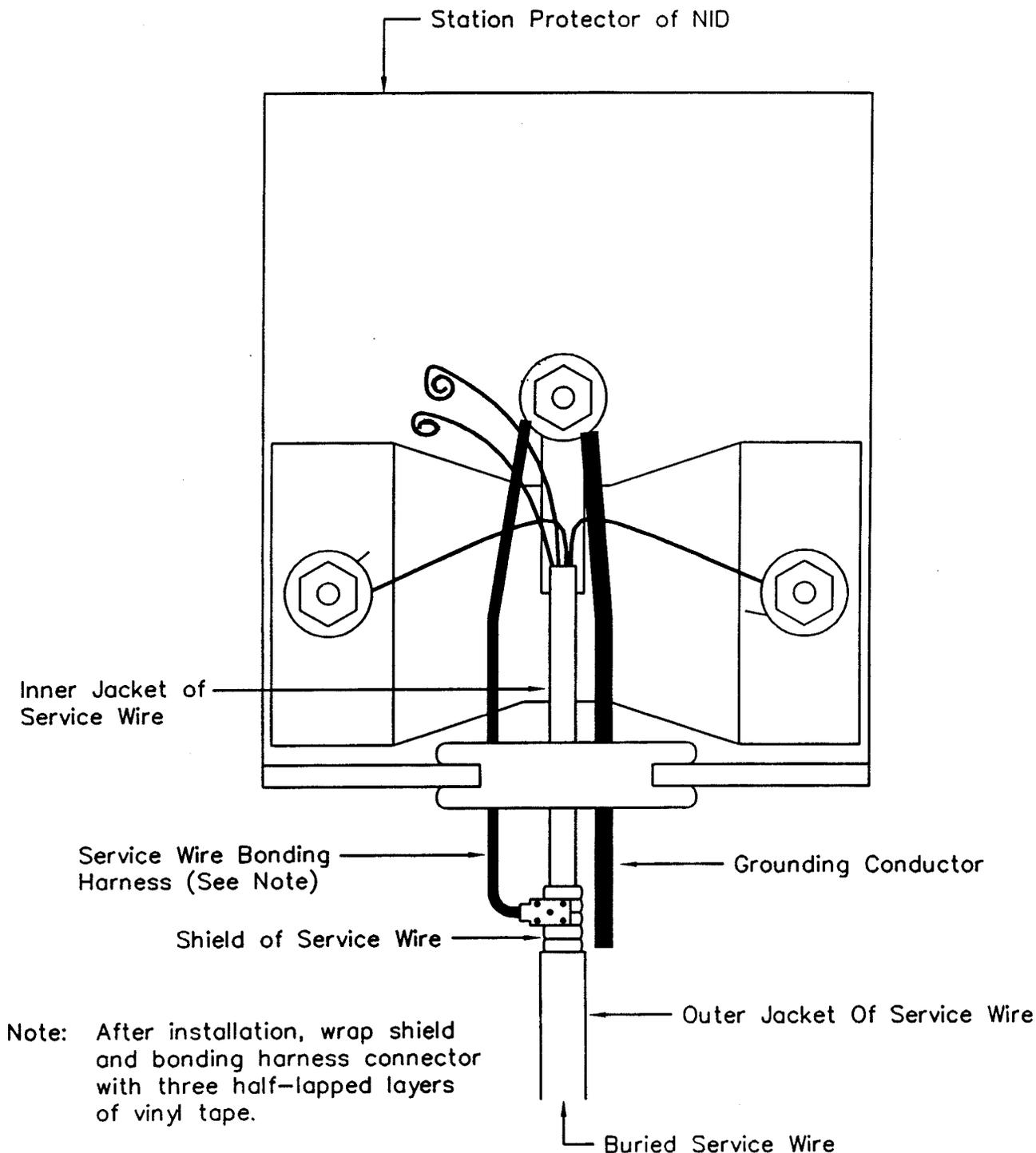
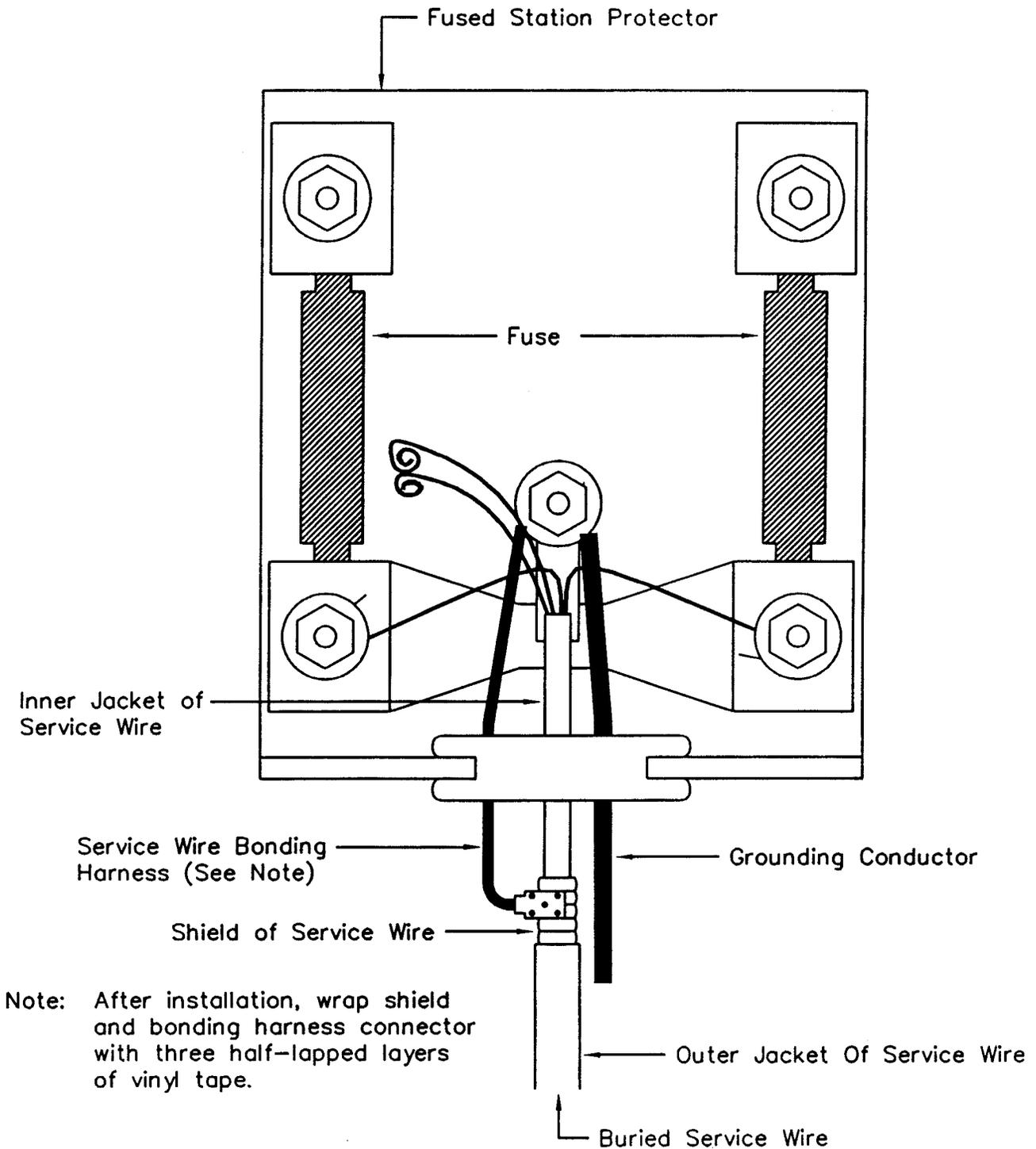
BONDING BURIED SERVICE WIRE AT STATION PROTECTOR OF NID
USING SERVICE WIRE BONDING HARNESS

FIGURE 13

BONDING BURIED SERVICE WIRE AT FUSED STATION PROTECTOR
USING SERVICE WIRE BONDING HARNESS

(2) On buried service drops and aerial service drops of more than 6 pairs using RUS accepted or RUS technically accepted cables, the shields shall be terminated with a RUS accepted or RUS technically accepted cable shield bonding connector and extended to the ground binding post of the NID, BET, or fused primary station protector with a RUS accepted or RUS technically accepted bonding harness wire. The

installation of the shield bond connector and bonding harness wire shall be in accordance with the manufacturer's instructions.

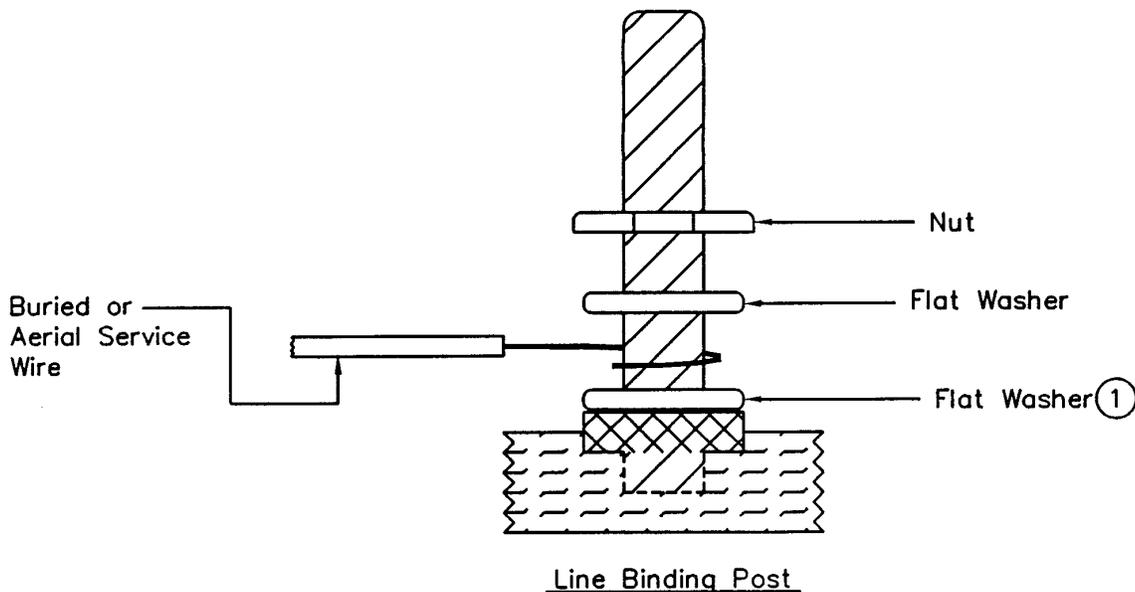
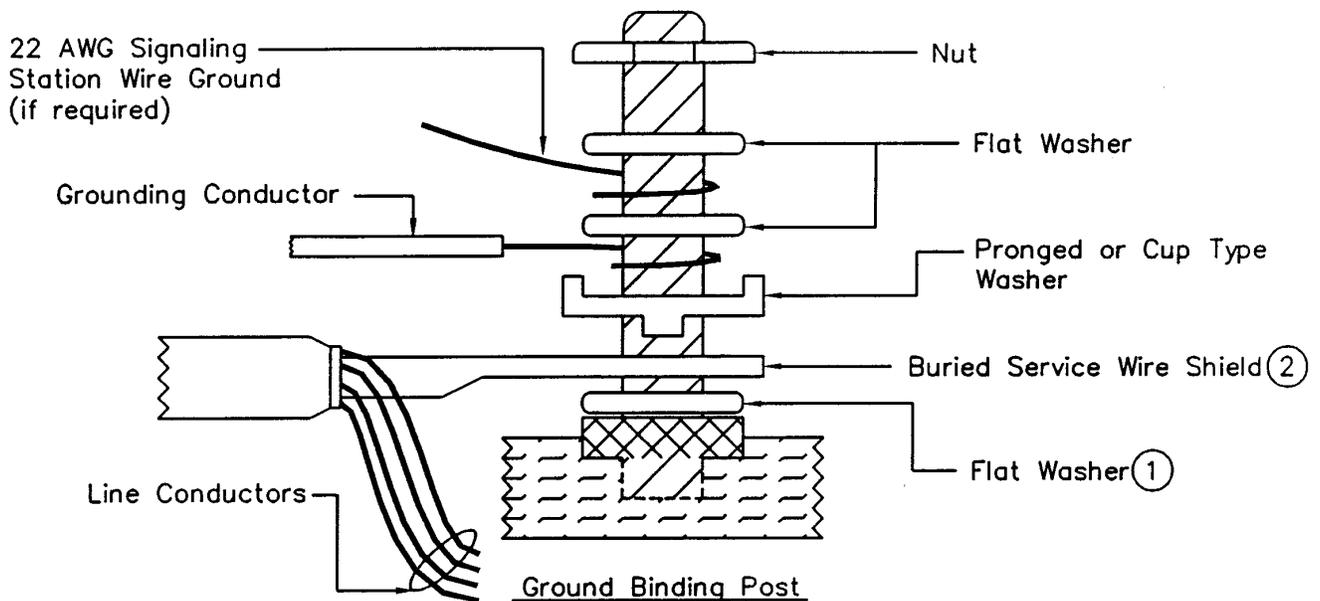
(3) The shield and other conductors at the fuseless primary station protector incorporated in the NID shall be terminated as shown on Figure 14 in paragraph (ee)(4) of this section. The pronged or cupped washer shall be placed above the shield. The grounding

conductor shall be placed around the post on top of the pronged or cupped washer. A flat washer shall be placed above the grounding conductor.

(4) The station wire signaling ground conductor, if required, shall be placed above the first flat washer and beneath the second flat washer as indicated in Figure 14 as follows:

BILLING CODE 3410-15-P

FIGURE 14

TERMINATION OF CONDUCTORS AND SHIELD ON
STATION PROTECTOR BINDING POSTS OF NIDNotes:

- ① If shoulder is inadequate to support shield or wire add a flat washer.
- ② Terminate buried service wire shield with station protector grounding lug of NID in accordance with either Figure 10 or 12.

(5) The shield and other conductors at the fused primary station protector shall be terminated as shown on Figure 15 in paragraph (ee)(6) of this section. The pronged or cupped washer shall be placed above the shield. The grounding

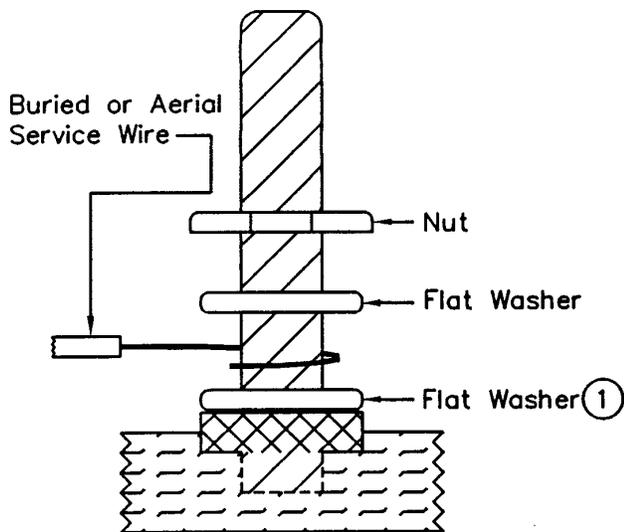
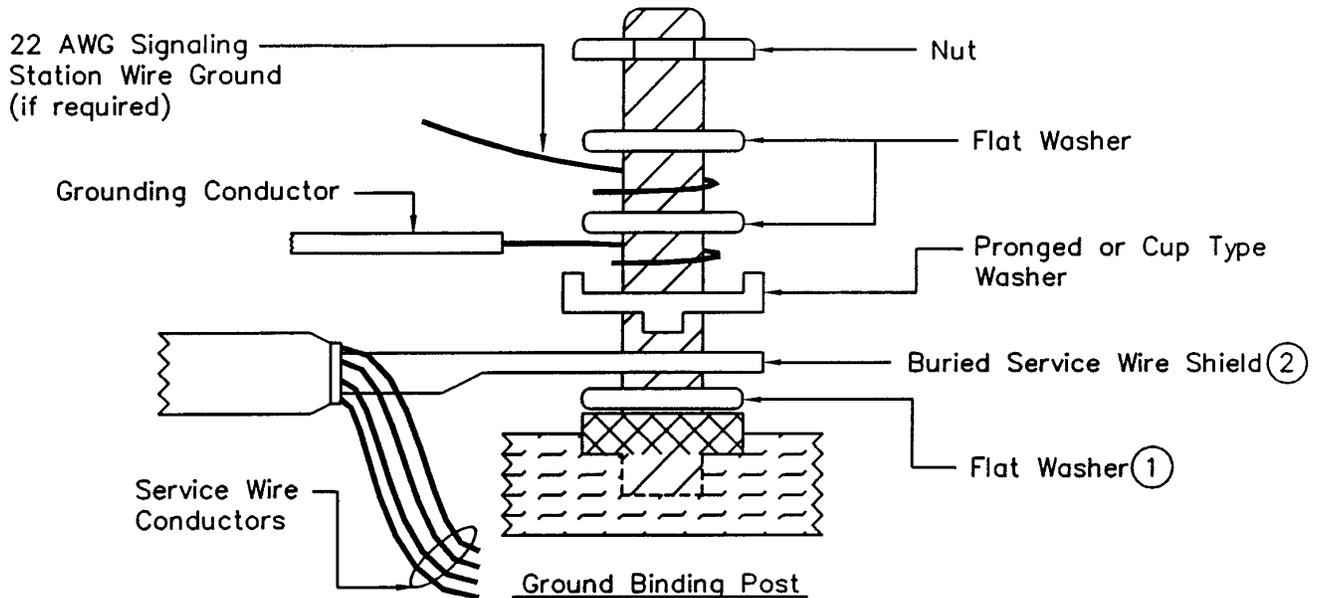
conductor shall be placed around the post on top of the pronged or cupped washer. A flat washer shall be placed above the grounding conductor.

(6) The station wire signaling ground conductor, if required, shall be placed

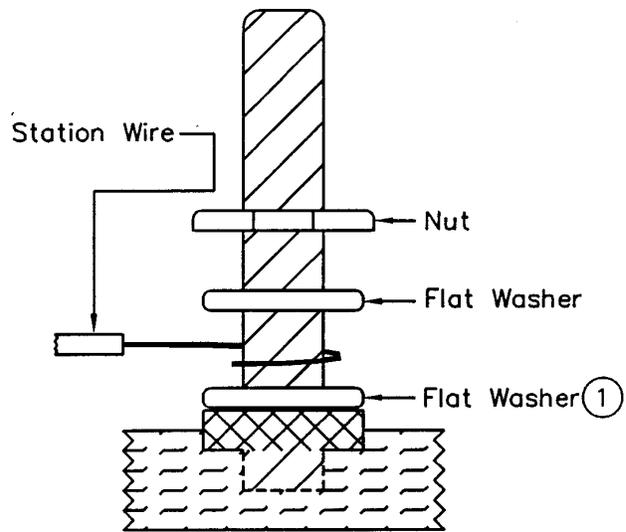
above the first flat washer and beneath the second flat washer as indicated in Figure 15 as follows:

BILLING CODE 3410-15-P

FIGURE 15

TERMINATION OF CONDUCTORS AND SHIELD ON
FUSED STATION PROTECTOR BINDING POSTS

Service Wire Binding Post



Station Wire Binding Post

Notes:

- (1) If shoulder is inadequate to support shield or wire add a flat washer.
- (2) Terminate buried service wire shield on fused station protector grounding lug in accordance with either Figure 11 or 13.

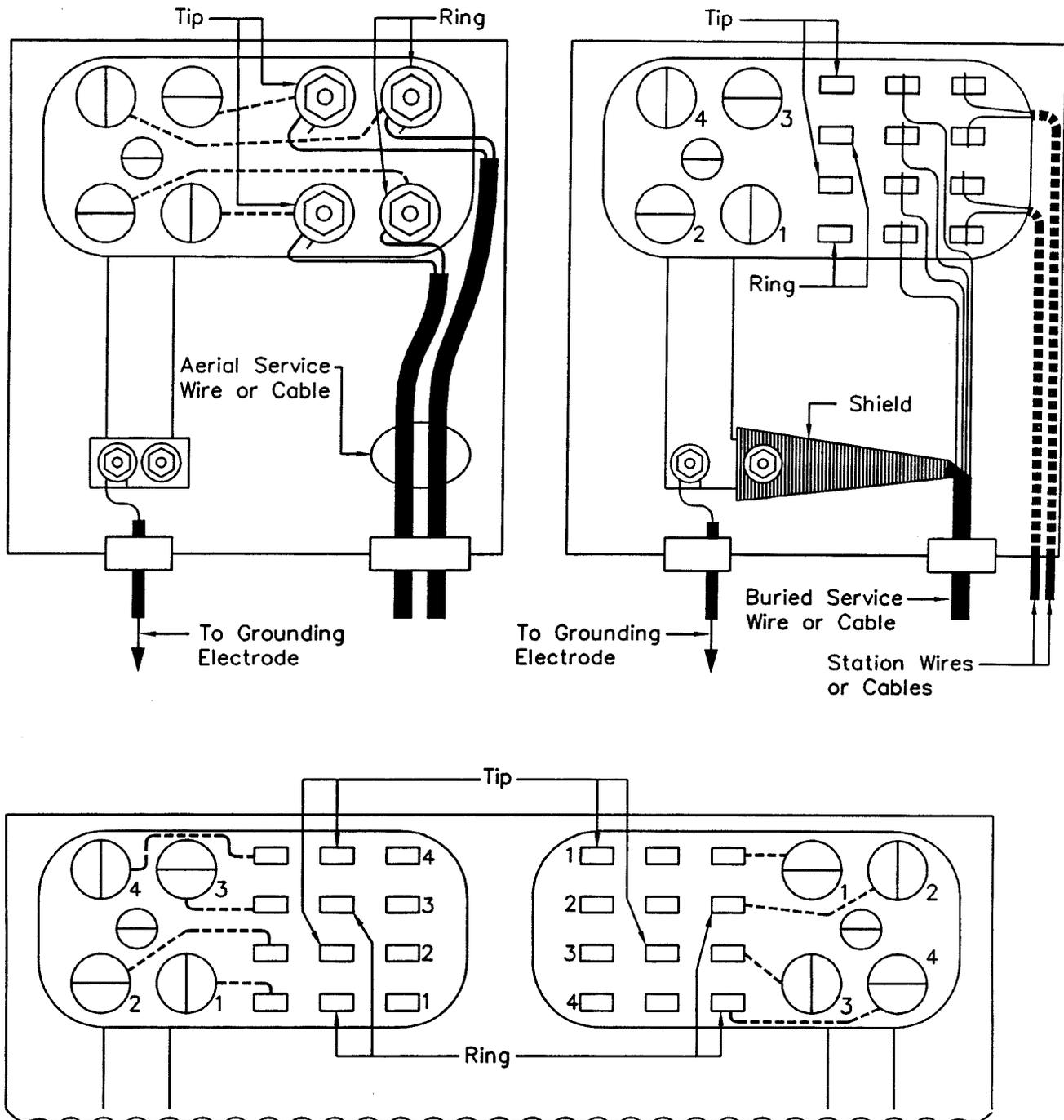
(7) Indoor NIDs or BETs that are equipped with "Quick Connect" type terminals shall not have more than one wire connected per clip. No. 19 AWG copper and No. 18 AWG copper covered-steel reinforced aerial service

wire conductors shall not be connected to quick connect terminals. Nonmetallic reinforced aerial service wire using No. 22 AWG copper conductors may be connected to the quick connect terminals.

(8) Tip and ring connections and other connections in multipair NIDs or BETs shall be as indicated in Figure 16 as follows:

BILLING CODE 3410-15-P

FIGURE 16

MULTIPAIR NID OR BET TERMINAL CONNECTIONS
CONTAINING FUSELESS STATION PROTECTORS

Note: #18 AWG copper-covered steel reinforced aerial service conductors shall not be connected to quick connect terminals. Nonmetallic reinforced aerial service conductors (#22 AWG copper) may be connected to quick connect terminals.

(ff) System polarity and conductor identification shall be maintained in NIDs, BETs, or fused primary station protectors in accordance with construction drawings 815 and 815-1 contained in § 1755.510.

§ 1755.509 Mobile homes.

(a) Customer access location installations at mobile homes shall be treated the same whether the homes are mounted on permanent foundations or temporary foundations and shall be installed as specified in §§ 1755.500 through 1755.510. For the purpose of this section, mobile homes include motor homes, truck campers, travel trailers, and all forms of recreational vehicles. Customer access location installations at mobile homes can be considerably different than customer access location installations at regular homes and borrowers shall be certain that the two types of installations are properly applied.

(b) The method of customer access location installation prescribed by the ANSI/NFPA 70-1996, *NEC*[®] for a mobile home depends on how the

electric power is installed at the mobile home and it can involve considerable judgment on the part of the telecommunications installer. The *National Electrical Code*[®] and *NEC*[®] are registered trademarks of the National Fire Protection Association, Inc., Quincy, MA 02269. The ANSI/NFPA 70-1996, *NEC*[®], is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from NFPA, 1 Batterymarch Park, P. O. Box 9101, Quincy, Massachusetts 02269-9101, telephone number 1 (800) 344-3555. Copies of ANSI/NFPA 70-1996, *NEC*[®], are available for inspection during normal business hours at RUS, room 2845, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1598, Washington, DC 20250-1598 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Essentially, the ANSI/NFPA 70-1996, *NEC*[®], requires primary station protectors to be located where specific acceptable grounding electrodes exist. The ANSI/NFPA 70-1996, *NEC*[®], allows station protector installations to

be at the location of the power meter or the electric disconnecting means apparatus serving the mobile home providing these electric facilities are installed in the manner specifically defined by the ANSI/NFPA 70-1996, *NEC*[®]. The ANSI/NFPA 70-1996, *NEC*[®], requires the station protectors to be installed at the nearest of a number of other meticulously defined ANSI/NFPA 70-1996, *NEC*[®], acceptable electrodes where the protector cannot be installed at the power meter or the electric disconnecting means apparatus serving the mobile home. The provisions can be confusing.

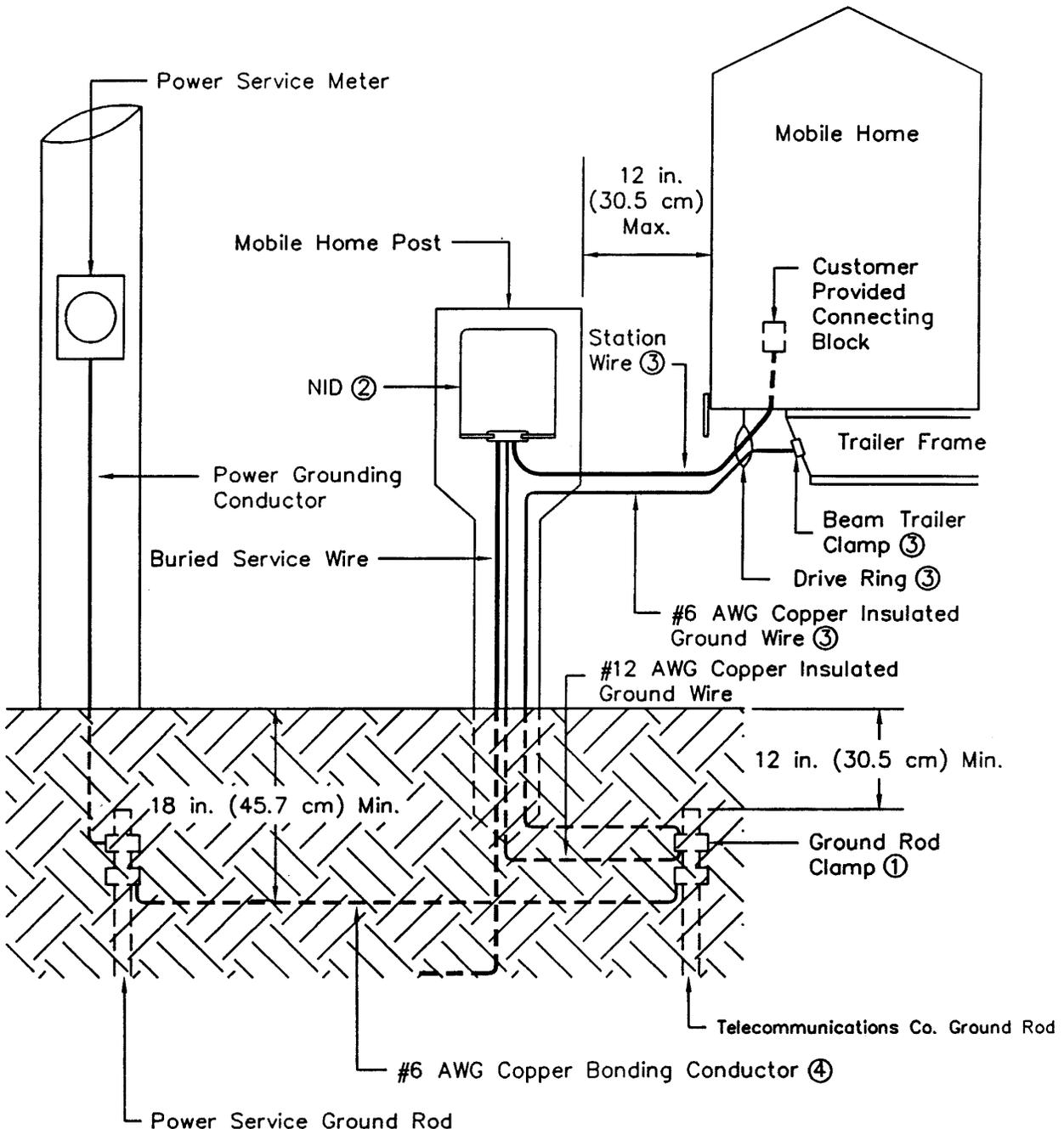
(c) To avoid the need for significant telecommunications installer judgment, NIDs shall be installed at mobile homes in either of the following situations:

(1) Where the mobile home electric service equipment (power meter, etc.) or the electric service disconnecting means associated with the mobile home is located within 35 ft (10.7 m) of the exterior wall of the mobile homes it serves, the NID shall be installed in accordance with Figure 17 as follows:

BILLING CODE 3410-15-P

FIGURE 17

NETWORK INTERFACE DEVICE (NID) INSTALLATION
ELECTRIC SERVICE EQUIPMENT WITHIN 35 FEET (10.7 METERS)
OF MOBILE HOME



- Notes: ① Clamp must be accepted by Listing Agency (UL, etc.) for two conductors, otherwise two clamps must be used.
 ② See Figure 19 for NID terminations. ③ See Figure 20 for mobile home installation.
 ④ Bare if buried its entire length; Insulated where human contact is possible.

(2) Where the mobile home electric service equipment (power meter, etc.) or the electric service disconnecting means

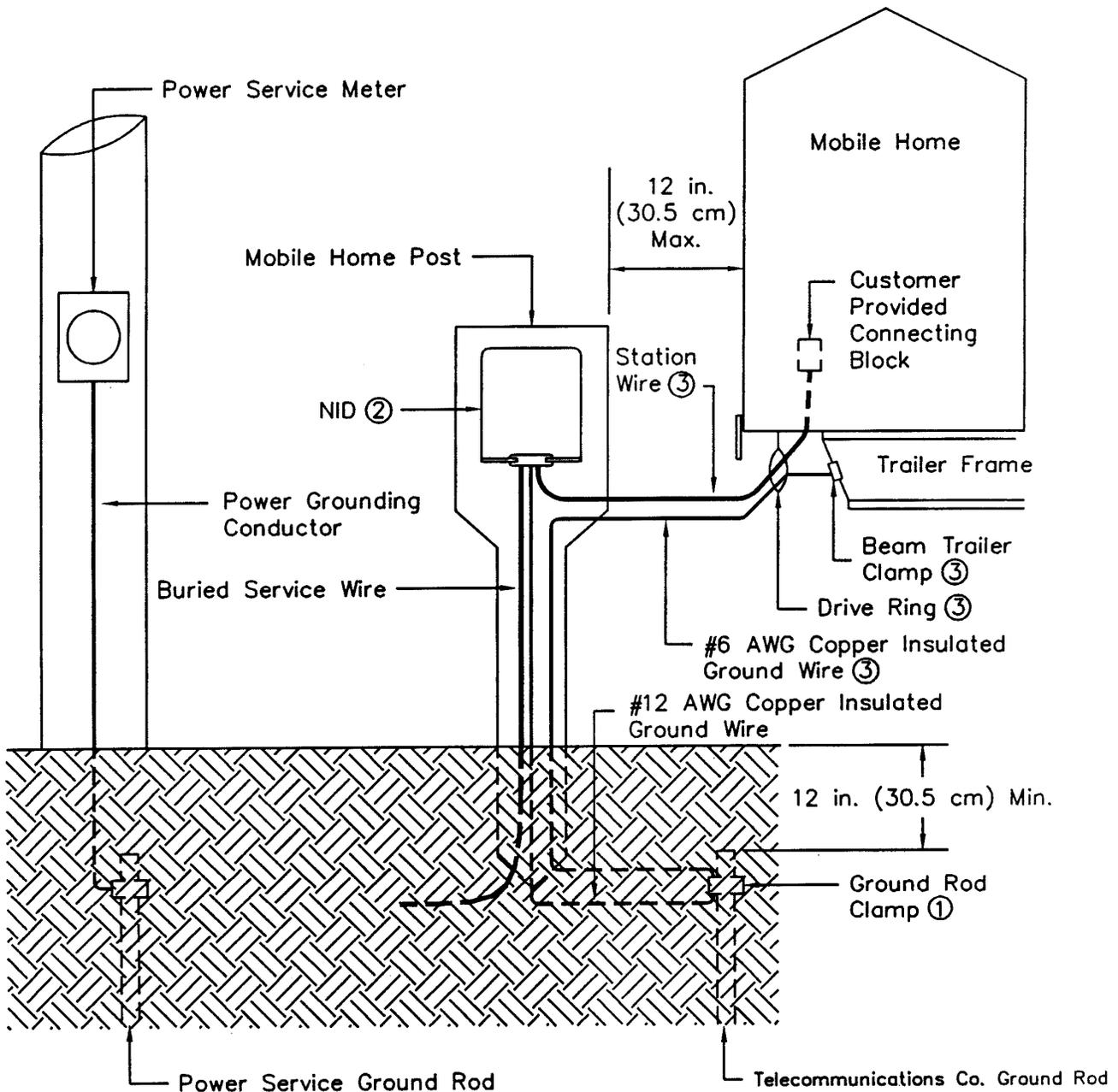
associated with the mobile home is located more than 35 ft (10.7 m) from the exterior wall of the mobile homes it

serves, the NID shall be installed in accordance with Figure 18 as follows:

BILLING CODE 3410-15-P

FIGURE 18

NETWORK INTERFACE DEVICE (NID) INSTALLATION
ELECTRIC SERVICE EQUIPMENT MORE THAN 35 FEET (10.7 METERS)
FROM MOBILE HOME



Notes: ① Clamp must be accepted by Listing Agency (UL, etc.) for two conductors, otherwise two clamps must be used.

② See Figure 19 for NID terminations.

③ See Figure 20 for mobile home installation.

(d) The service wire and station wire shall be terminated in the NID in accordance with Figure 19 in paragraph (e) of this section.

(e) Installation of the station wire and grounding conductor at the mobile home shall be in accordance with Figure 20. Figures 19 and 20 are as follows:

BILLING CODE 3410-15-P

FIGURE 19
NID TERMINATIONS

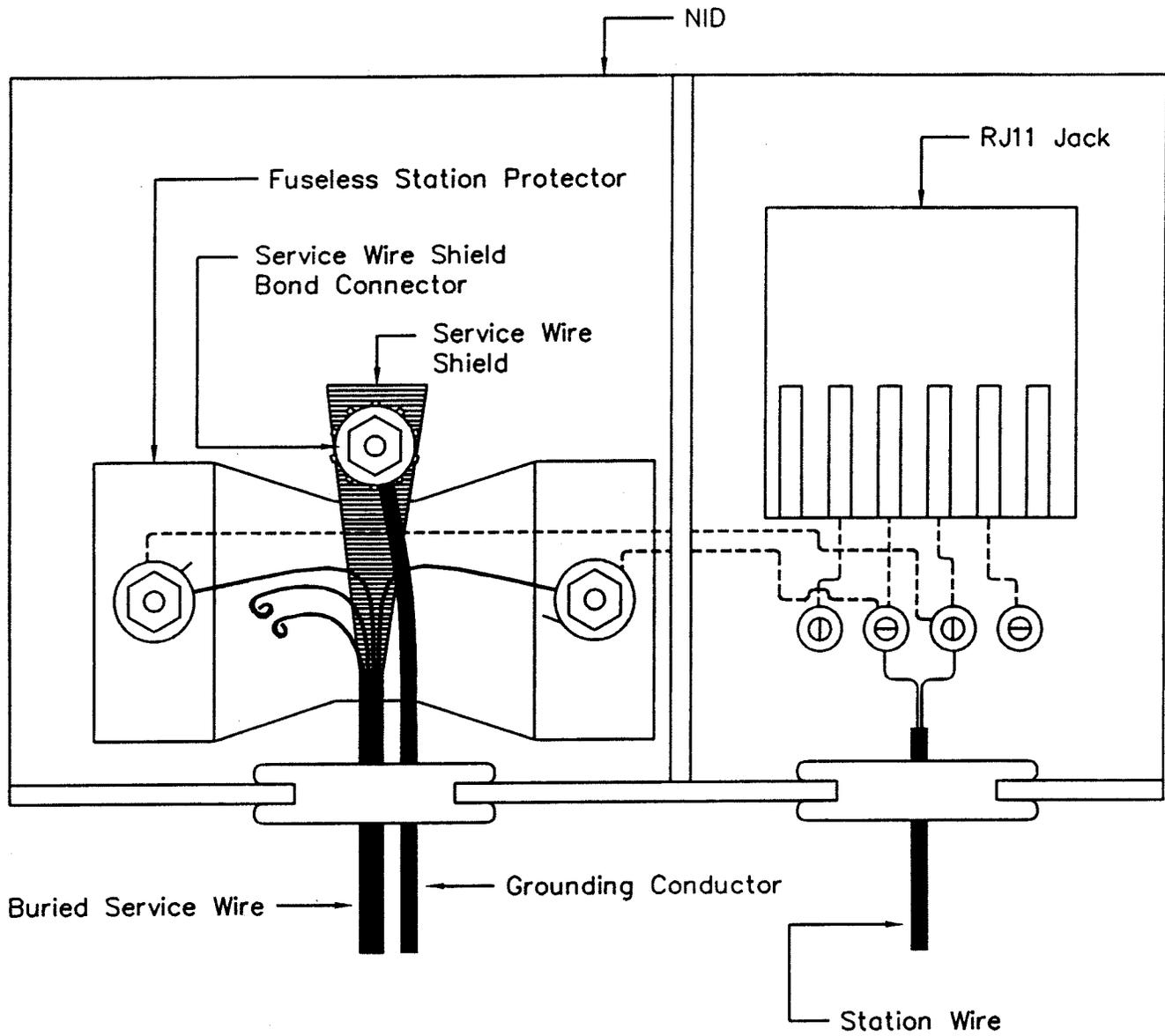
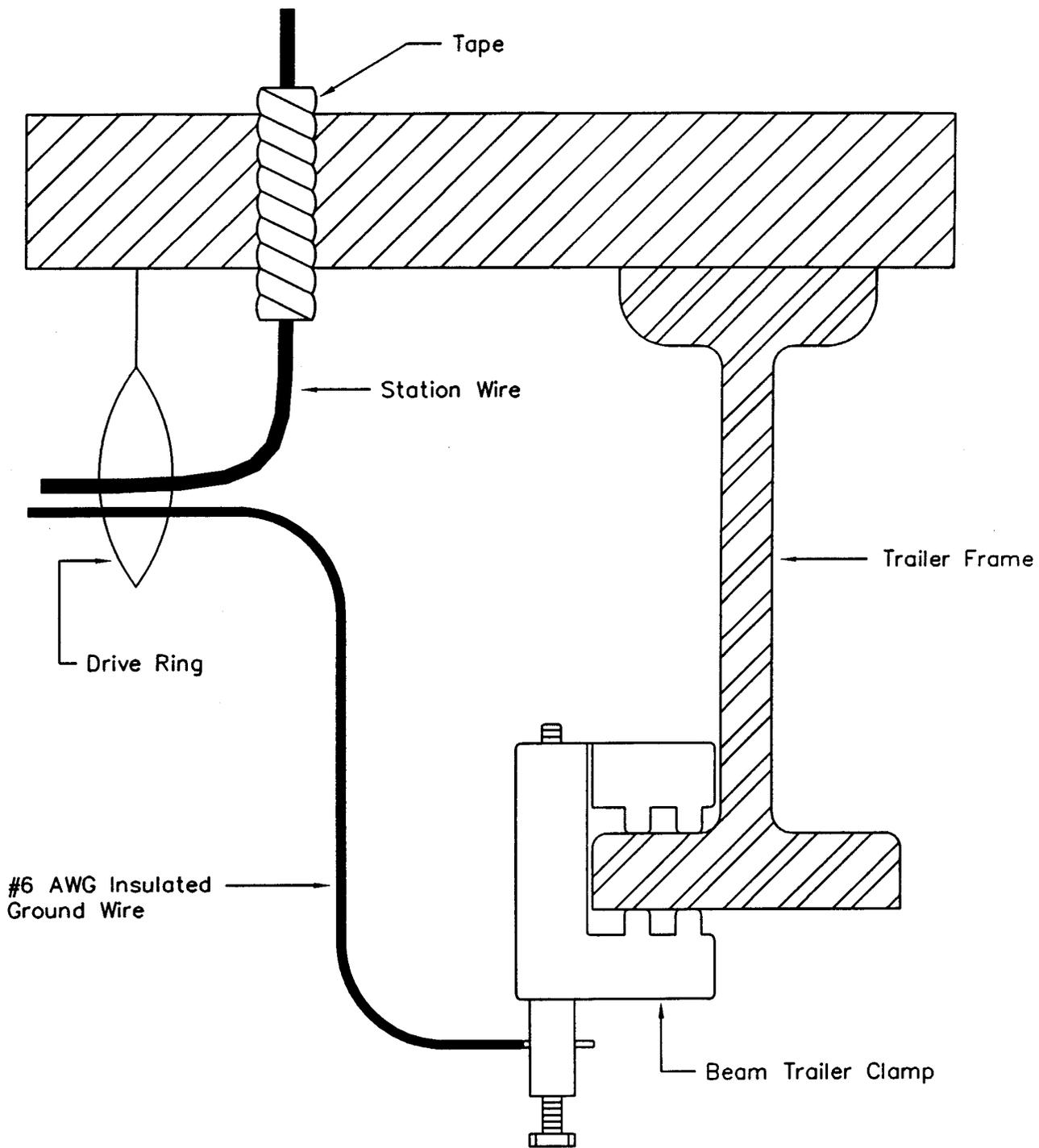


FIGURE 20
MOBILE HOME INSTALLATION



§ 1755.510 Construction and assembly unit drawings.

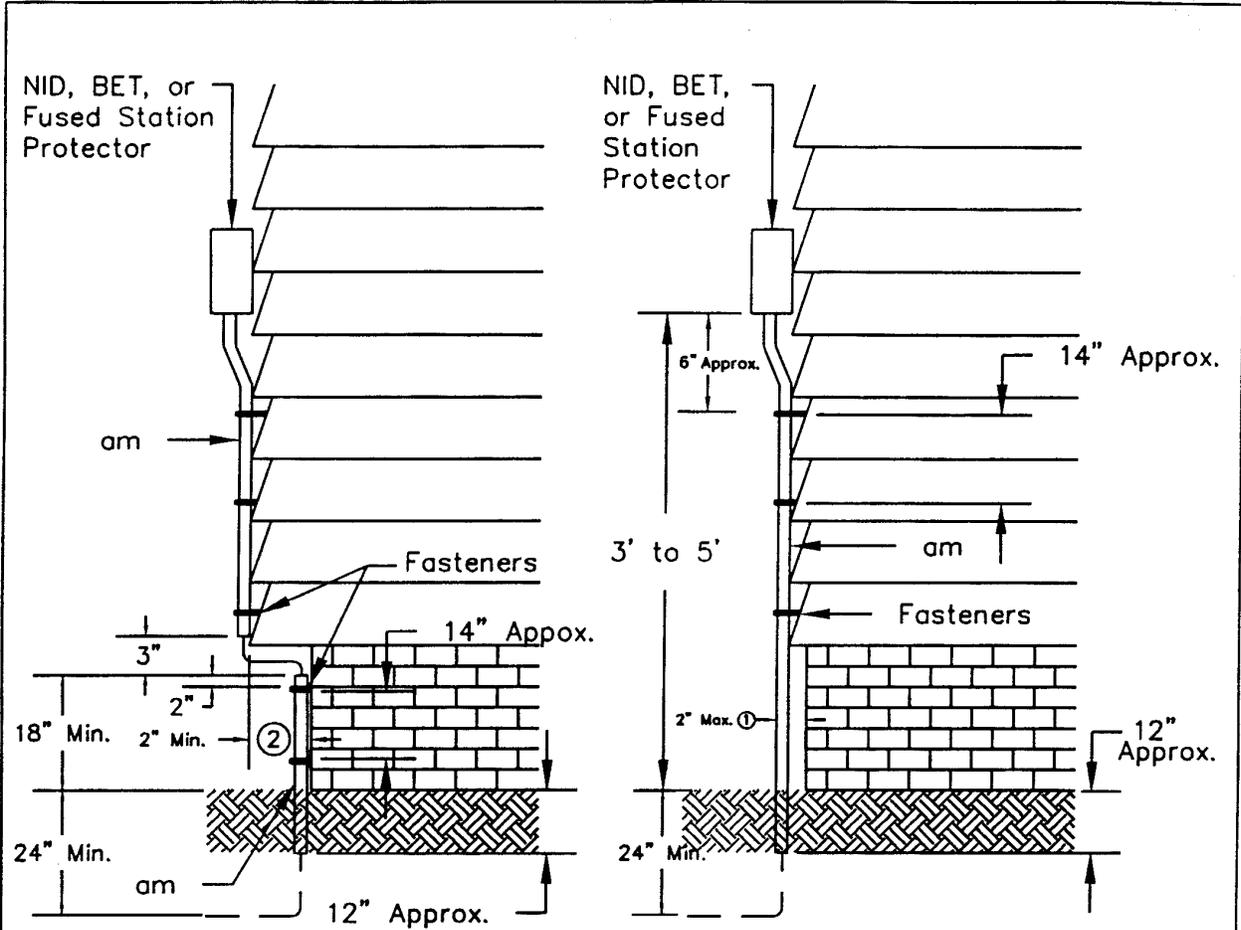
(a) The construction and assembly unit drawings in this section shall be used by borrowers to assist the installer in making the customer access location installations.

(b) The asterisks appearing on the construction drawings indicate that the items are no longer listed in the RUS Informational Publication (IP) 344-2, "List of Materials Acceptable for Use on Telecommunications Systems of RUS Borrowers." RUS IP 344-2 can be obtained from the Superintendent of

Documents, P. O. Box 371954, Pittsburgh, PA 15250-7954, telephone number (202) 512-1800.

(c) Drawings BM83, 312-1, 501-1, 501-2, 503-2, 504, 505, 506, 507, 508-1, 510, 510-1, 510-2, 513, 702, 815, 815-1, 912, 958, and 962 are as follows:

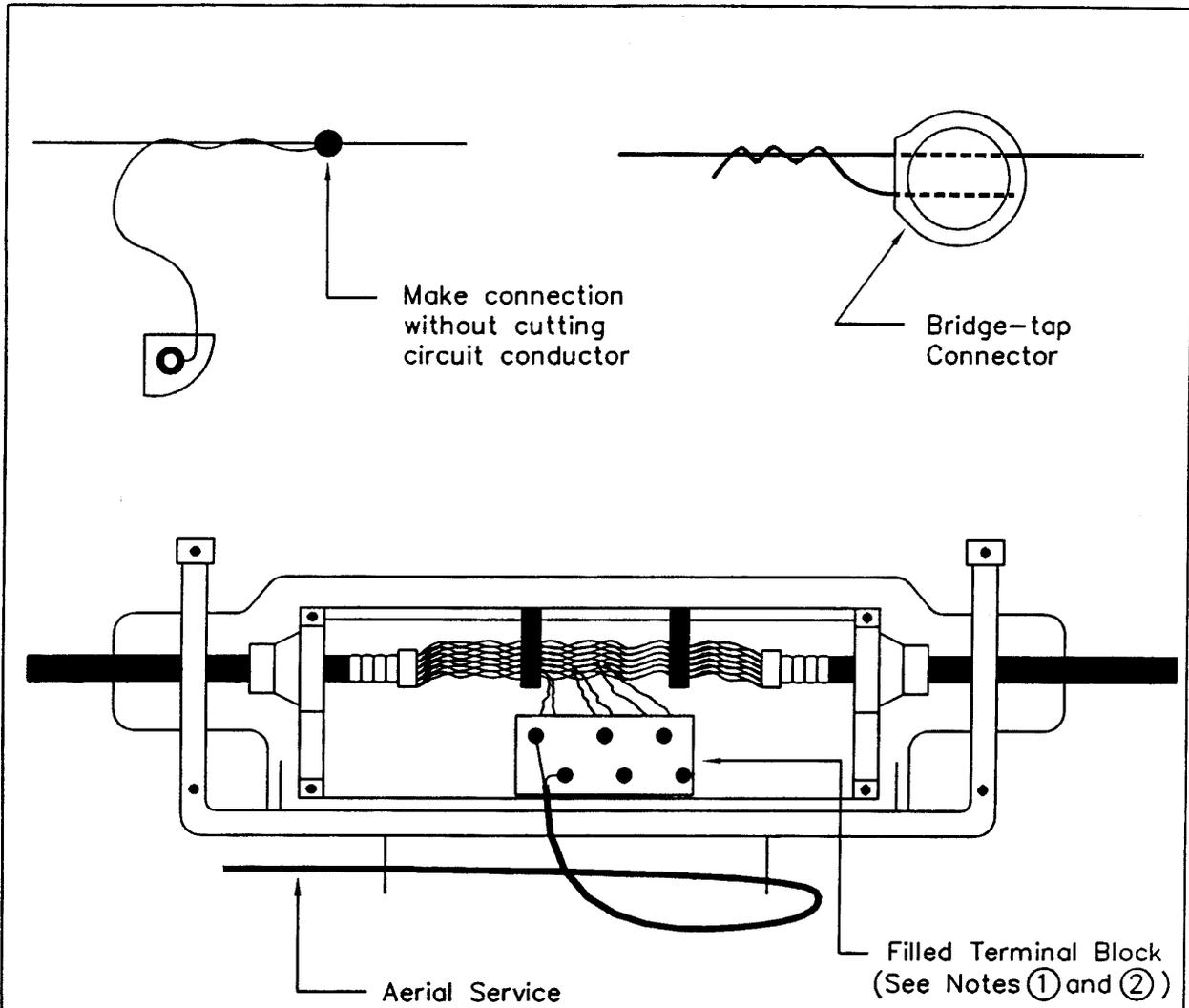
BILLING CODE 3410-15-P



Notes:

- ① Where an obstruction of less than 2 inches is encountered, the buried service guard shall extend from the protector to 12 inches below the ground.
- ② Where an obstruction of greater than 2 inches is encountered, the buried service guard shall be divided as shown (from the protector to the obstruction, and from 3 inches below the obstruction to 12 inches below the ground).
- ③ For converting English units to metric units use 1 in. = 25.4 mm and 1 ft = 0.3048 m.

ITEM	MATERIAL	NO. REQ'D
am	Guard, buried service (including fasteners)	1
RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES BURIED SERVICE GUARD		
Scale: NTS		August 1997
		BM83



Notes:

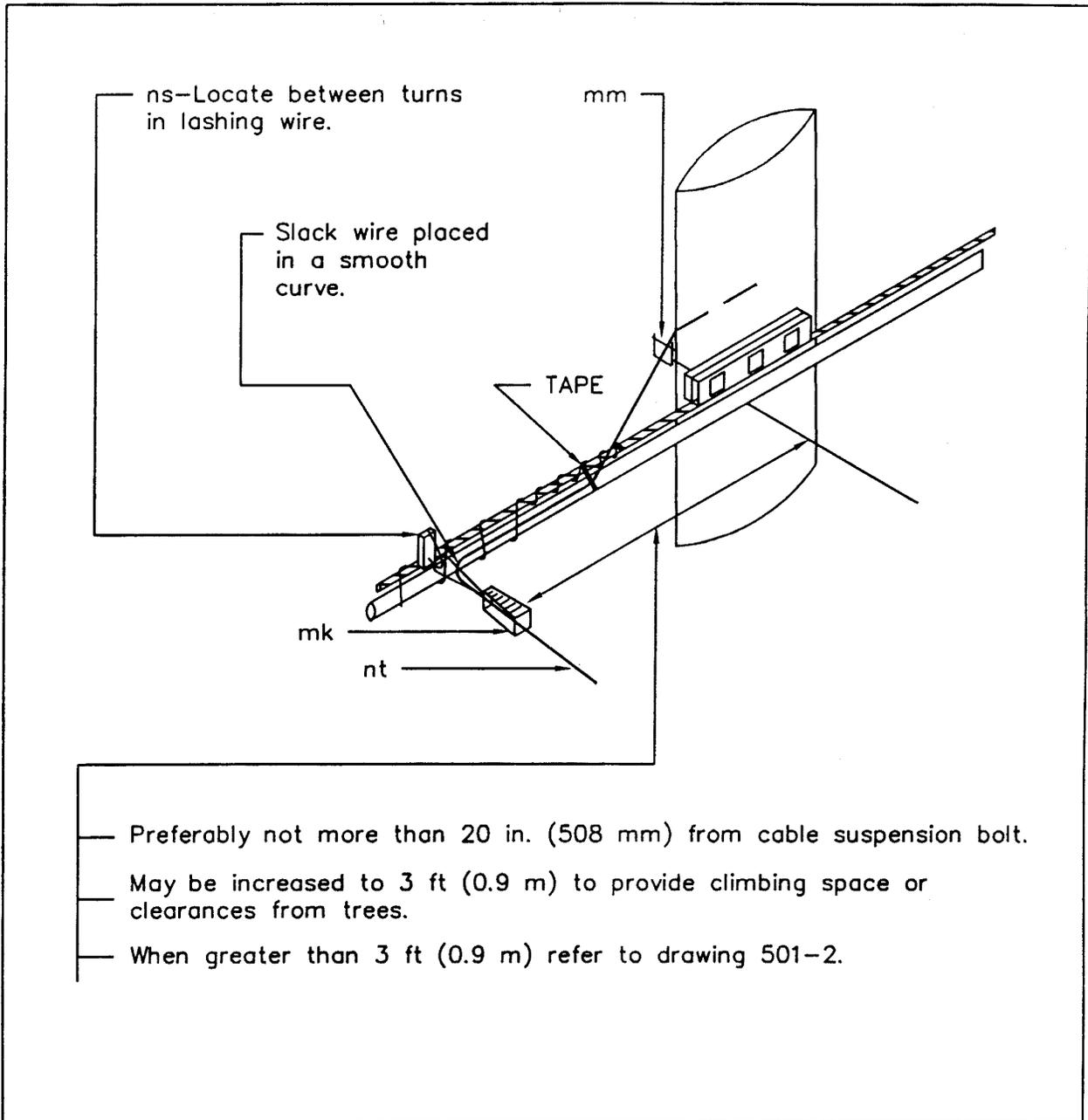
- ① Where drop wire connections are made along aerial plastic cable use unprotected filled terminal blocks equipped with lead-out wires.
- ② Connect the conductors of the aerial service wire directly to the binding posts of the filled terminal block.

RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES
 AERIAL PLASTIC CABLE DETAILS OF WIRE
 CONNECTIONS TO TERMINAL BLOCKS

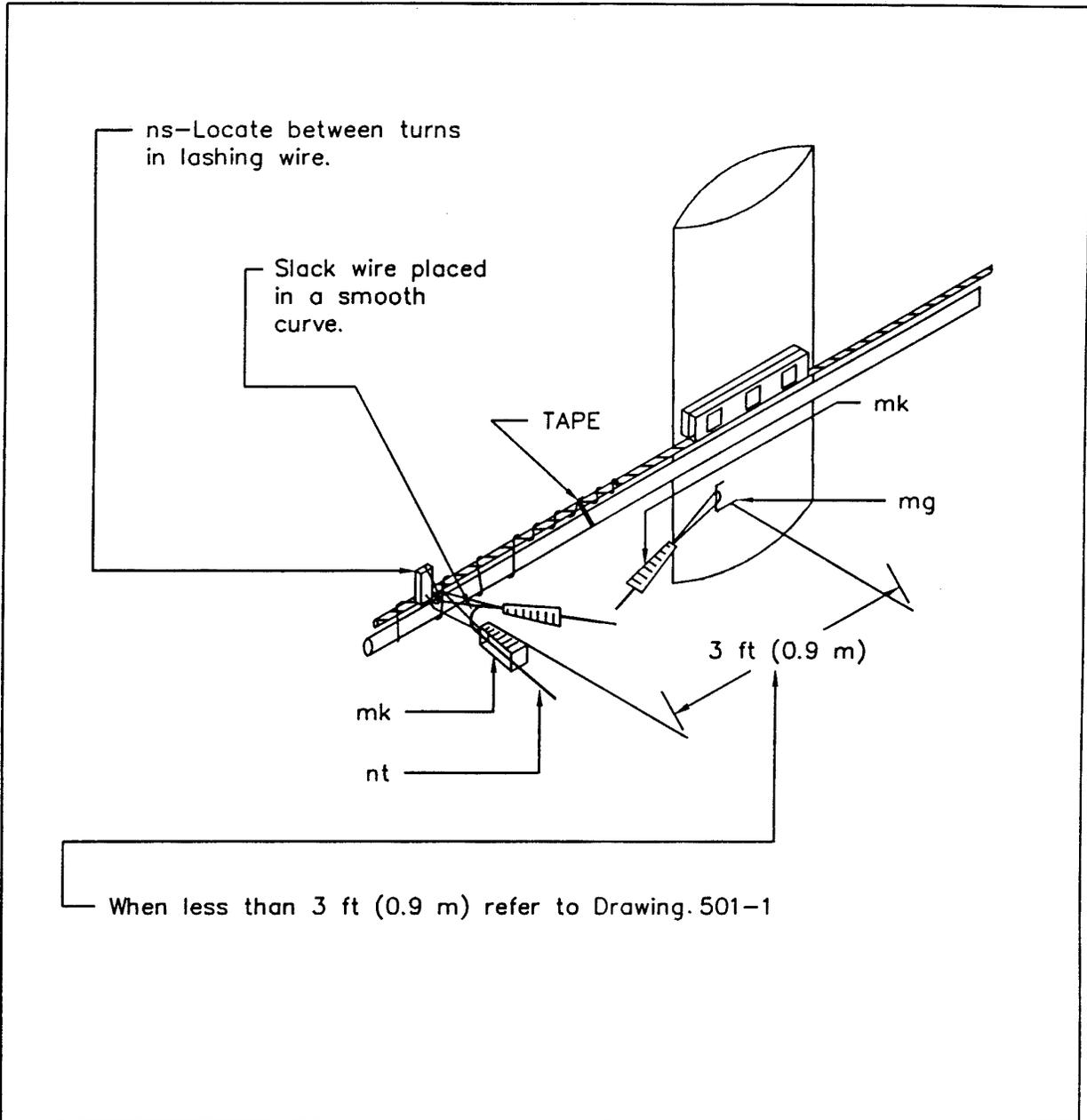
Scale: NTS

August 1997

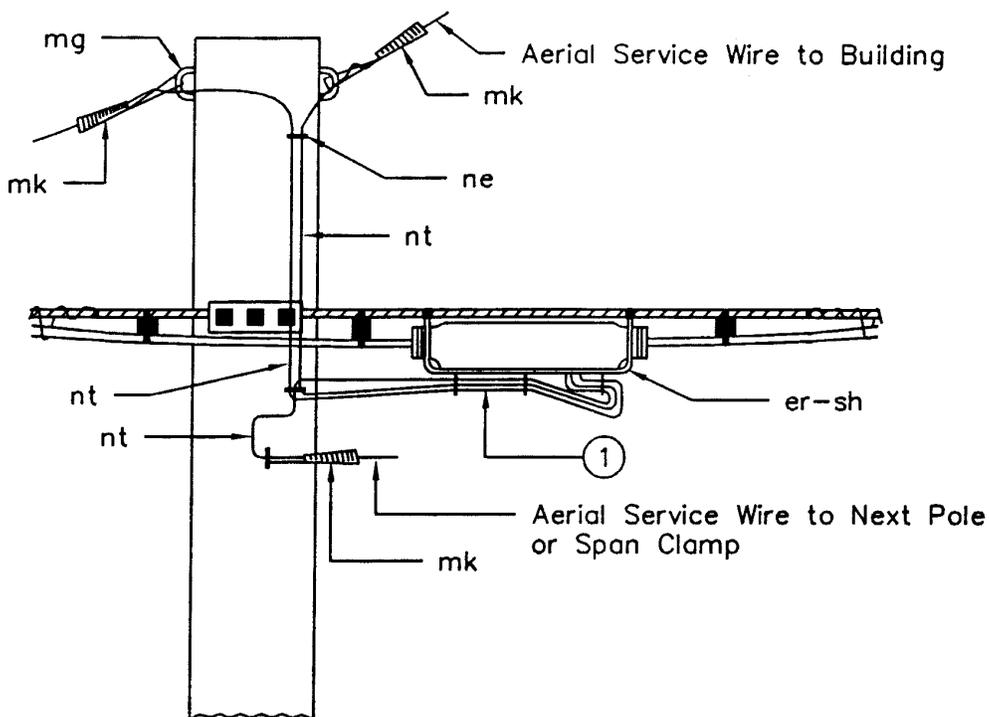
312-1



ITEM	NO. REQUIRED	MATERIAL
*mm	As Required	Rings, drive
*ns	As Required	Clamps, span
mk	As Required	Clamps, drop wire
nt	As Required	Wire, aerial service
RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES SPAN CLAMP ATTACHMENT		
Scale: NTS		August 1997
		501-1



ITEM	NO. REQUIRED	MATERIAL
*mg	As Required	Hooks, drive
*ns	As Required	Clamps, span
mk	As Required	Clamps, drop wire
nt	As Required	Wire, aerial service
RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES SPAN CLAMP ATTACHMENT		
Scale: NTS		August 1997
		501-2



Note:

- ①. Install aerial service wiring through all rings on bottom of terminal housing. Turn wire back around last ring to assigned pair. Form wire loosely to avoid sharp bends.

ITEM	NO. REQUIRED	MATERIAL
*mg	As required	Hooks, drive
*ne	As required	Rings, bridle
er	-	Enclosures, ready-access
sh	-	Blocks, filled, terminal, unprotected
nt	As required	Wire, aerial service
mk	As required	Clamps, drop wire

RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES
SERVICE WIRE CONNECTIONS TO AERIAL CABLE

Scale: NTS

August 1997

503-2

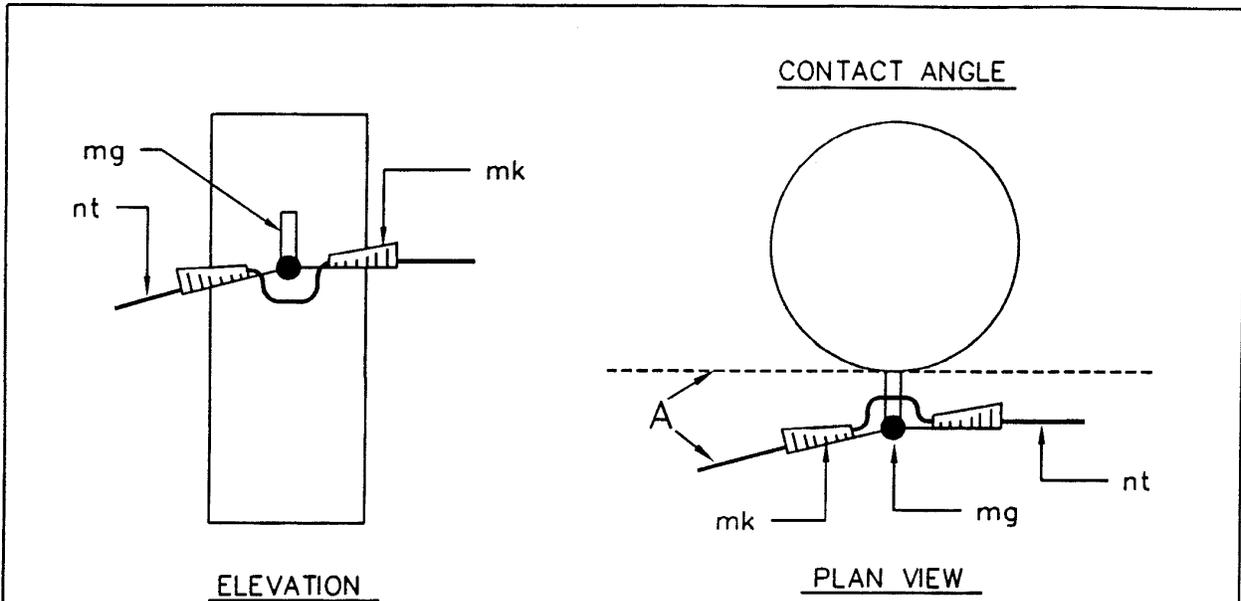


FIGURE A: Aerial service wires whose contact angle (A) exceeds five degrees and/or whose adjacent span lengths are different by 25 percent or more.

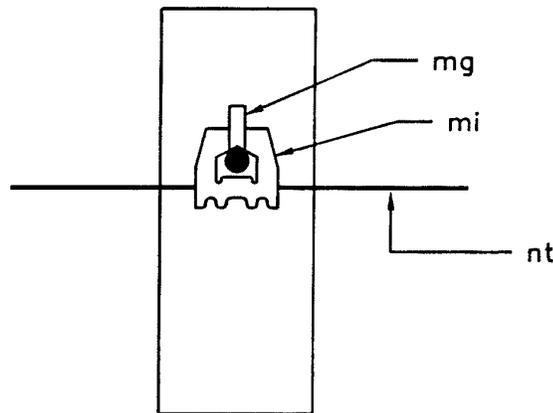
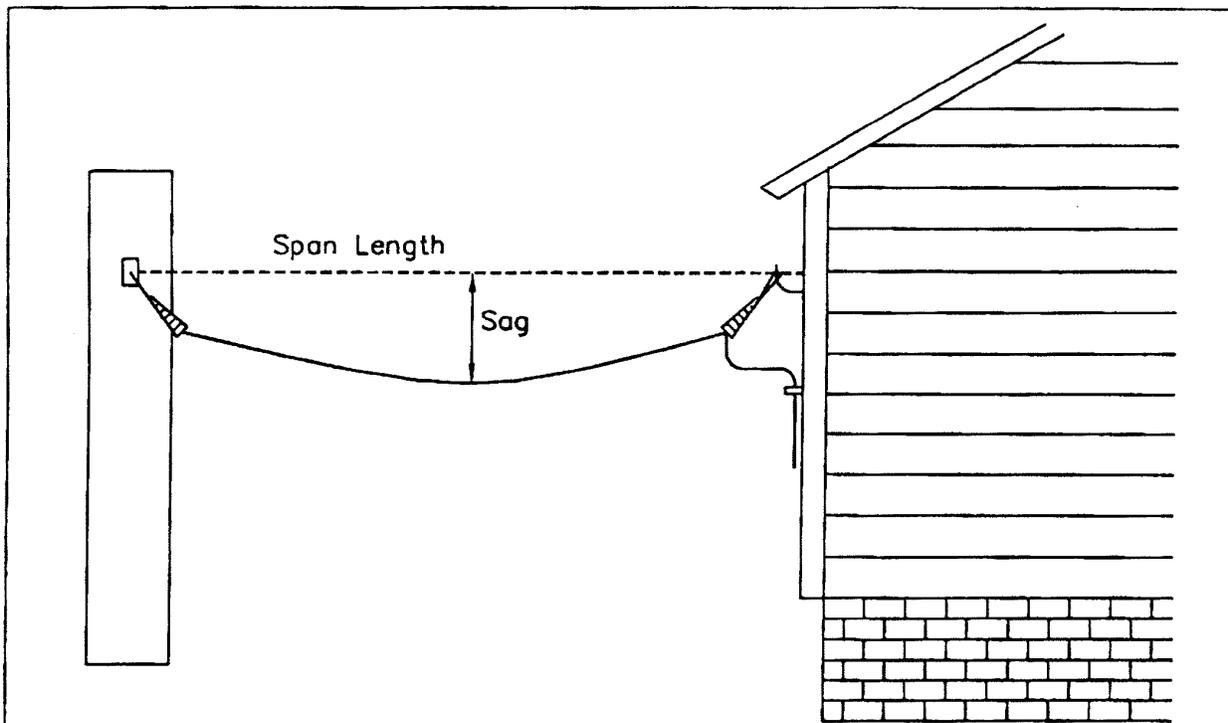


FIGURE B: Aerial service wires whose contact angle (A) is less than five degrees and/or whose adjacent span lengths are different by less than 25 percent.

ITEM	NO. REQUIRED	MATERIAL
*mg	As required	Hooks, drive
nt	As required	Wire, aerial service
mk	As required	Clamps, drop wire
*mi	As required	Support, drop wire
RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES SERVICE WIRE ATTACHMENT AT INTERMEDIATE POLE		
Scale: NTS		August 1997
		504



MINIMUM STRINGING SAG – COPPER COVERED STEEL REINFORCED (CCSR) and NONMETALLIC REINFORCED (NMR) AERIAL SERVICE WIRES

SPAN LENGTH ft (m)	SAG—MEDIUM AND LIGHT LOADING DISTRICTS	SAG—HEAVY LOADING DISTRICT
100 (30.5) OR LESS	20 in. (510 mm)	20 in. (510 mm)
125 (38)	34 in. (860 mm)	34 in. (860 mm)
150 (46)	4 ft (1.2 m)	4 ft (1.2 m)
175 (53)	5.5 ft (1.7 m)	7 ft (2.1 m)
200 (61)	7 ft (2.1 m)	11 ft (3.4 m)
225 (66.5)	9 ft (2.7 m)	
250 (76)	11 ft (3.4 m)	

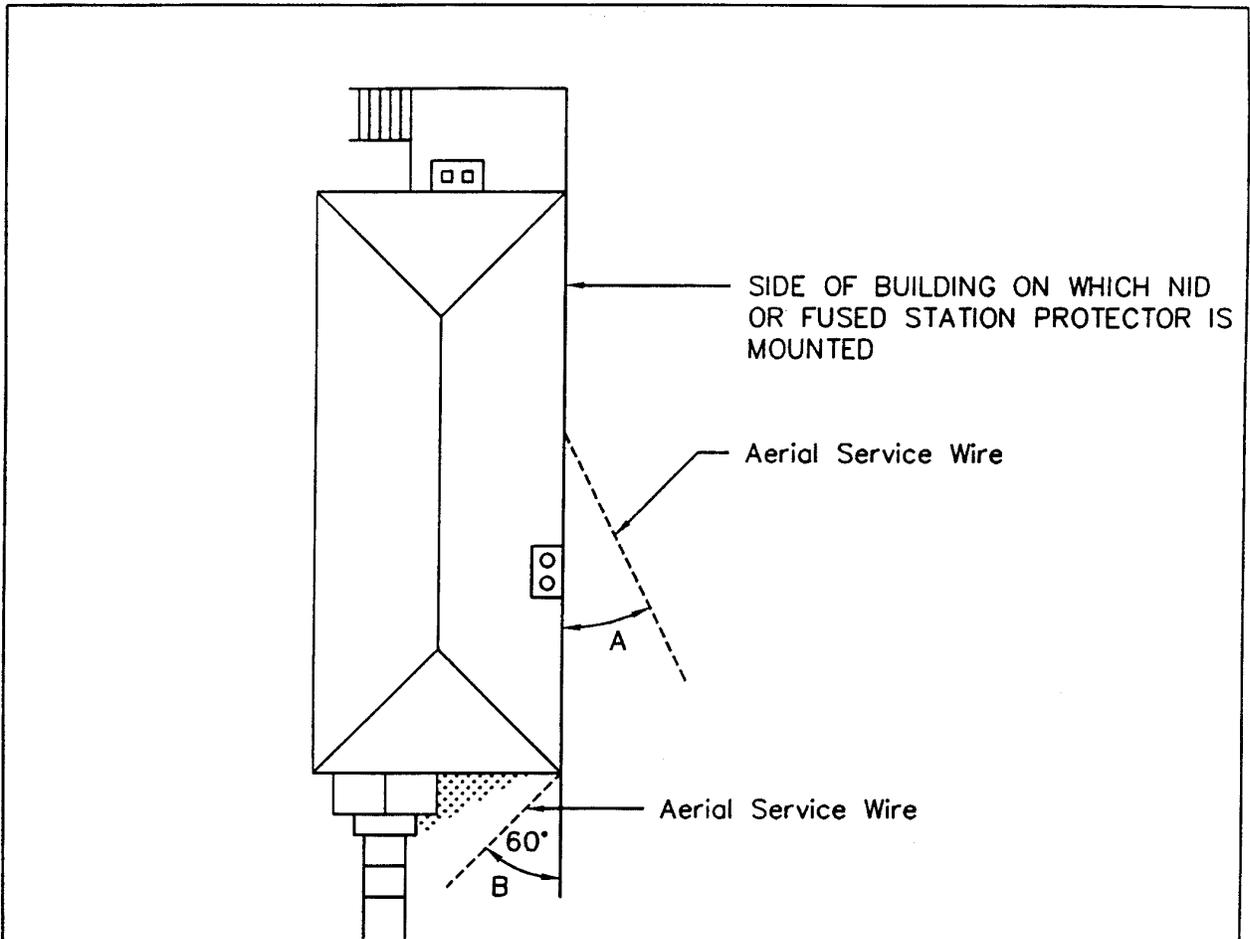
Note: To reduce vibration and dancing, service wire shall be twisted one complete turn for each 10 ft (3 m) of span length at the time installation.

**RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES
AERIAL SERVICE WIRE SAGS**

Scale: NTS

August 1997

505



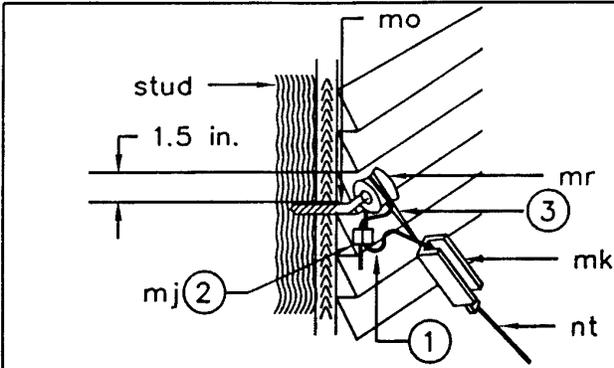
Frame Buildings Where NIDs Containing Fuseless Station Protectors are Used on Fire Resistant Buildings.

Use house hook or drop wire hook for any angle except angle B. When necessary to place service wire within angle B use "S" knob with corner bracket to avoid service wire attachment on front of building.

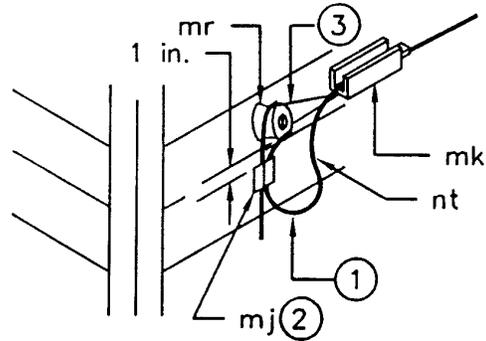
Frame Buildings Where Fused Station Protectors are Used.

If angle A is less than 30° use "S" knob. If angle A is greater than 30° use "S" knob with 5/16 in. (7.9 mm) angle screw. When necessary to place service wire within angle B use "S" knob with corner bracket to avoid service wire attachments on front of buildings.

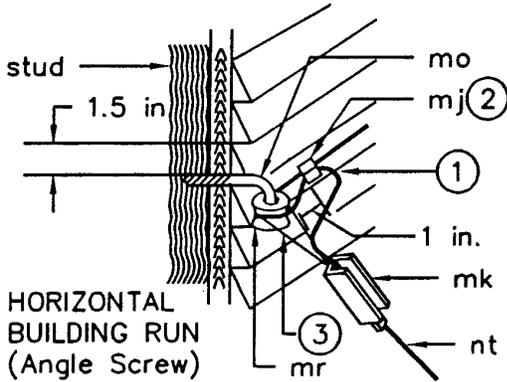
RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES SELECTION OF SERVICE WIRE ATTACHMENT		
Scale: NTS		August 1997
		506



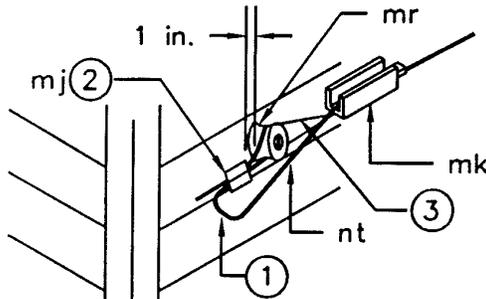
VERTICAL BUILDING RUN (Angle Screw)



VERTICAL BUILDING RUN



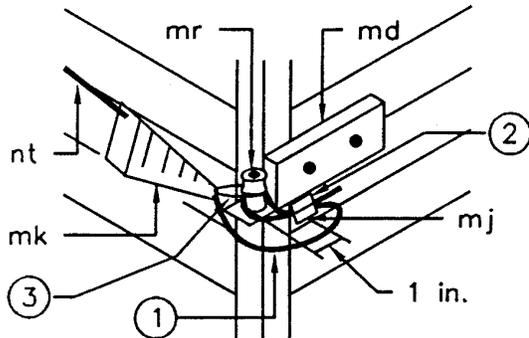
HORIZONTAL BUILDING RUN (Angle Screw)



HORIZONTAL BUILDING RUN

Notes:

- ① Provide slack wire in the form of a smooth curve. Make sure exposed wire will not contact building.
- ② Close drop wire clip firmly on wire with side cutting or equivalent pliers.
- ③ Bail of clamp shall not bear against aerial service wire.
- ④ All house attachments illustrated shall be firmly anchored in studs.
- ⑤ For converting English units to metric units use 1 in. = 25.4 mm.



HORIZONTAL BUILDING RUN (Corner Bracket)

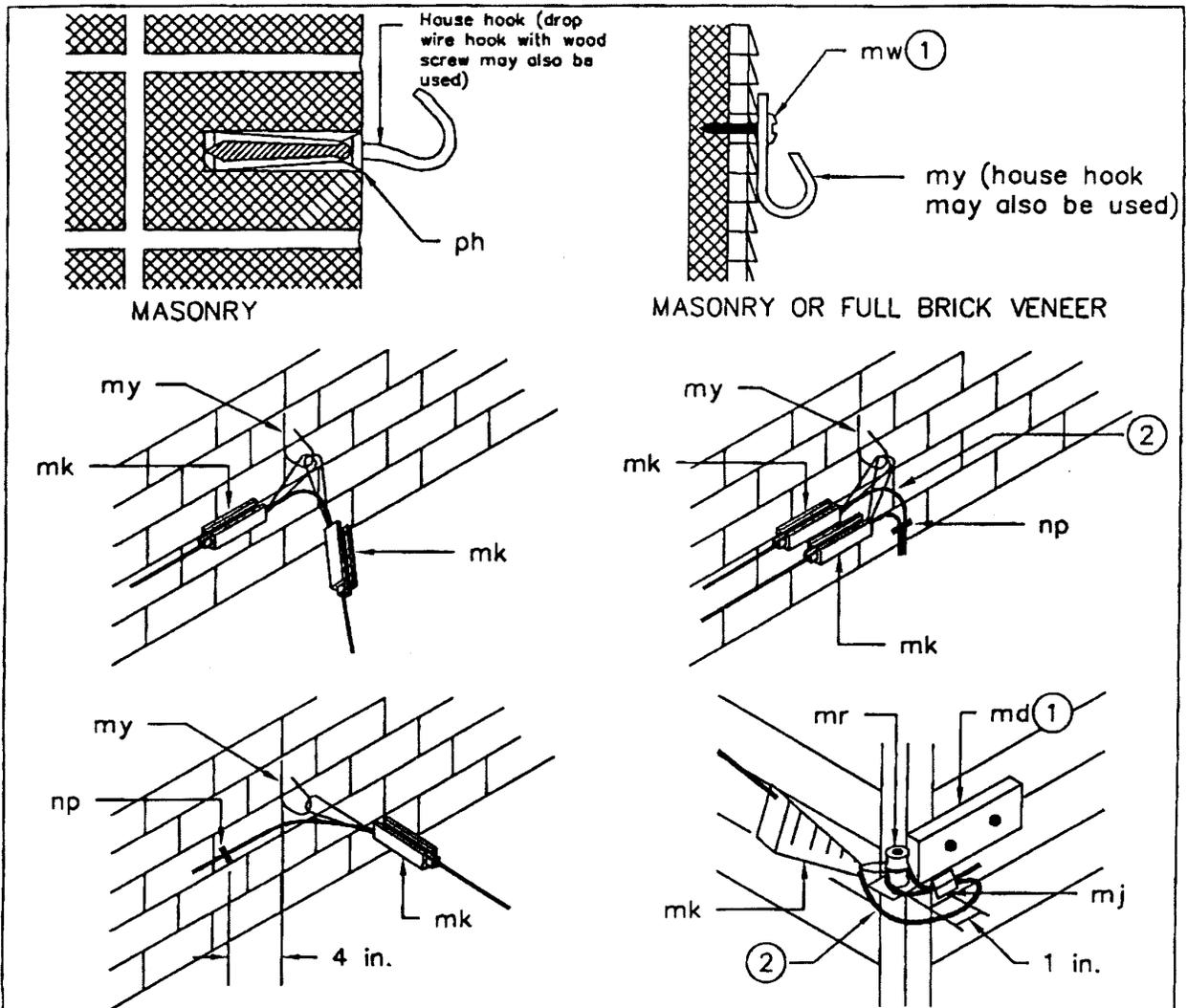
ITEM	MATERIAL	ITEM	MATERIAL
		-	Washer, 1.25 in. OD, 0.5 in. ID
mk	Clamp, drop wire	*mo	Screw, angle, 5/16 in.
*md	Bracket, house	nt	Wire, aerial service
*mr	Knob, insulator, "S"	*mj	Clip, drop wire

RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES
INSULATED FIRST ATTACHMENTS FOR
AERIAL SERVICE WIRE

Scale: NTS

August 1997

507



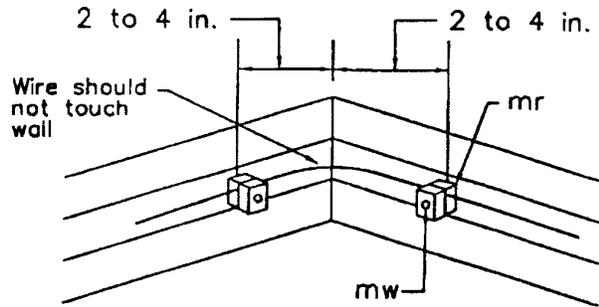
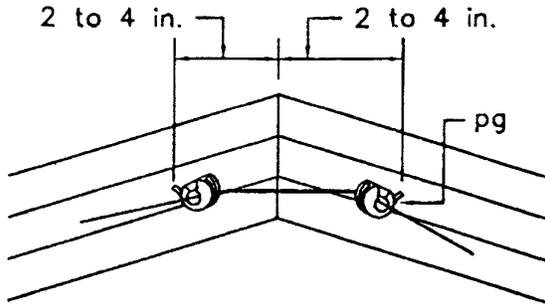
Notes:

- ① See Table 4 for appropriate fasteners to be used with attachments. Expansion anchors not required on frame buildings, attachments must be firmly secured in studs.
- ② Provide slack wire in the form of a smooth curve.
- ③ For converting English units to metric units use 1 in. = 25.4 mm.

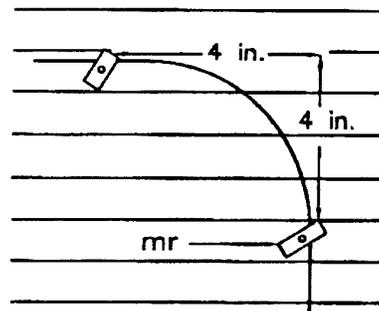
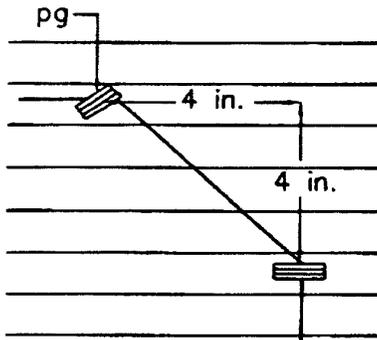
ITEM	MATERIAL	ITEM	MATERIAL
		*mw	Screw, R.H., stainless steel, wood
mk	Clamp, drop wire	*my	Hook, drop wire
*md	Bracket, house	*ph	Anchor, expansion
*mr	Knob, insulator, "S"	np	Clamp, cable
-	Hook, house	*mj	Clip, drop wire

RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES
UNINSULATED FIRST ATTACHMENTS FOR
AERIAL SERVICE WIRE

Scale: NTS	August 1997
508-1	



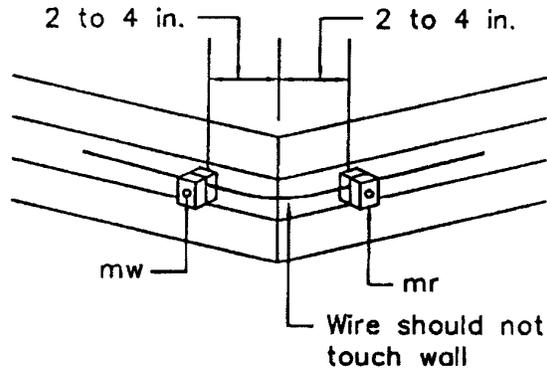
INSIDE CORNER



TURN

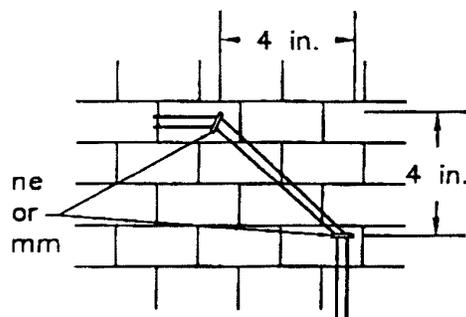
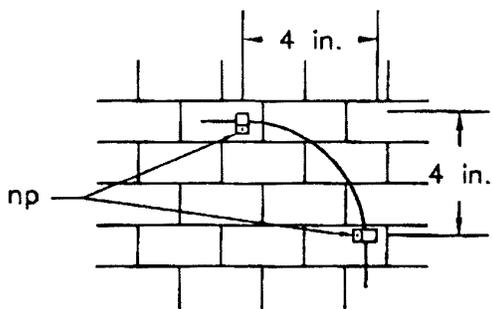
Notes:

- ① Refer to Table 4 for appropriate fastening device.
- ② For converting English units to metric units use 1 in. = 25.4 mm.

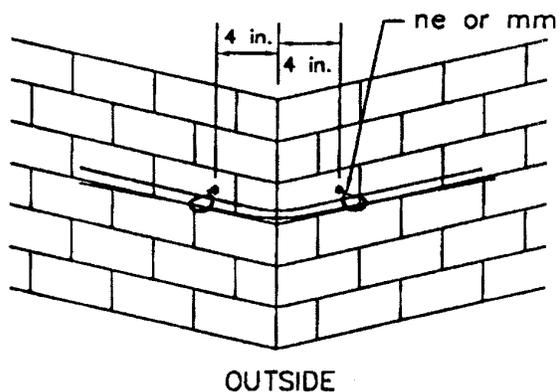
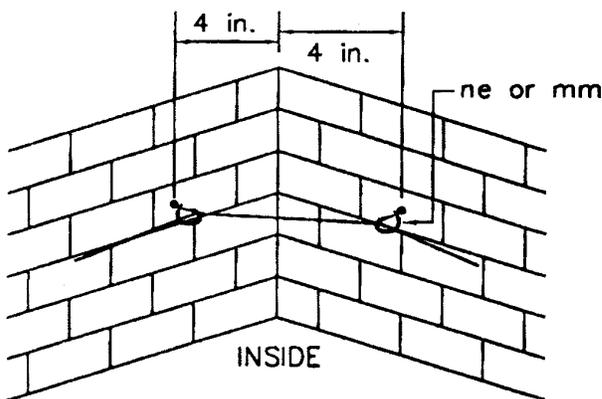


OUTSIDE CORNER

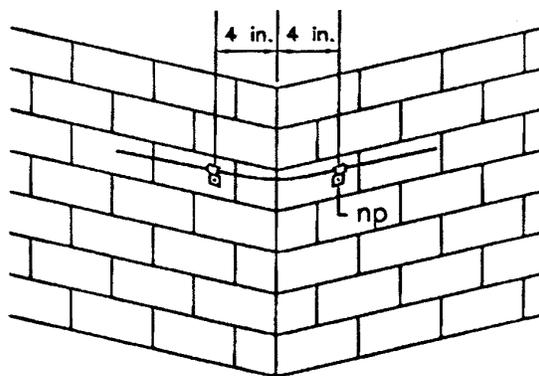
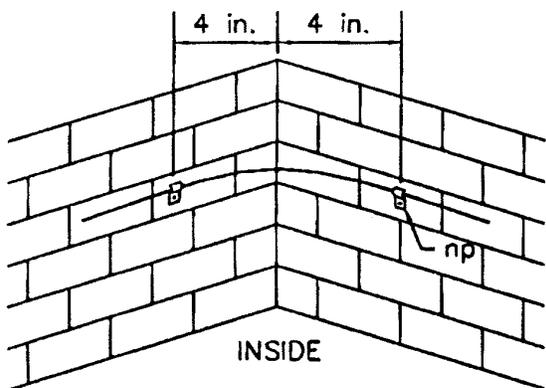
ITEM	NO. REQUIRED	MATERIAL
*pg	as required	Screw eye, insulated
*mr	as required	Knob, insulator, "C"
*mw	as required	Screw, R.H., wood
RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES INSULATED INTERMEDIATE ATTACHMENTS FOR SERVICE WIRES		
Scale: NTS		August 1997
		510



TURNS



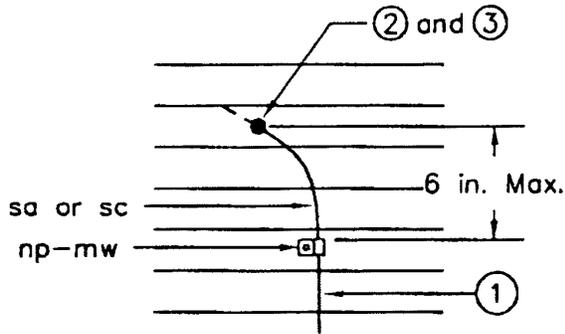
CORNERS



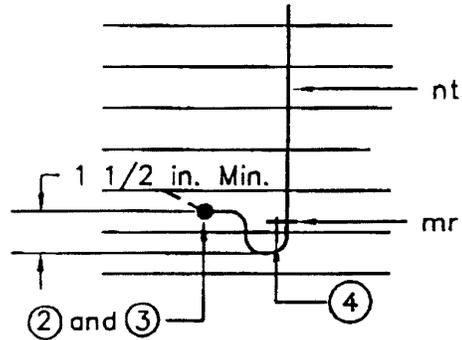
Note: For converting English units to metric units use 1 in. = 25.4 mm.

CORNERS

ITEM	NO. REQUIRED	MATERIAL
*ne	as required	Rings, bridle
*mm	as required	Rings, drive
*np	as required	Clamps, cable, one hole offset
RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES UNINSULATED INTERMEDIATE ATTACHMENTS FOR SERVICE WIRES		
Scale: NTS		August 1997
		510-1



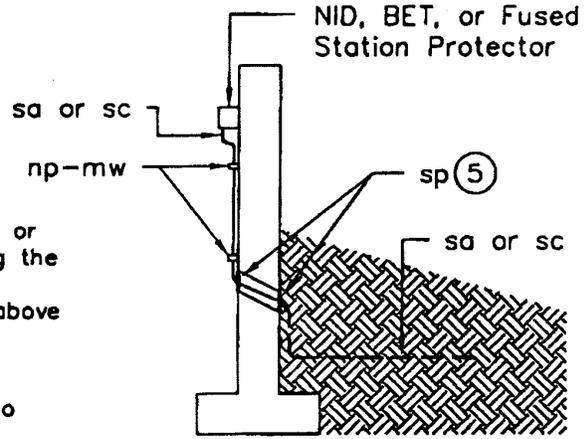
SKETCH A: Buried Service Above Grade Entrance



SKETCH B: Aerial Service Wire - Aerial Service Entrance

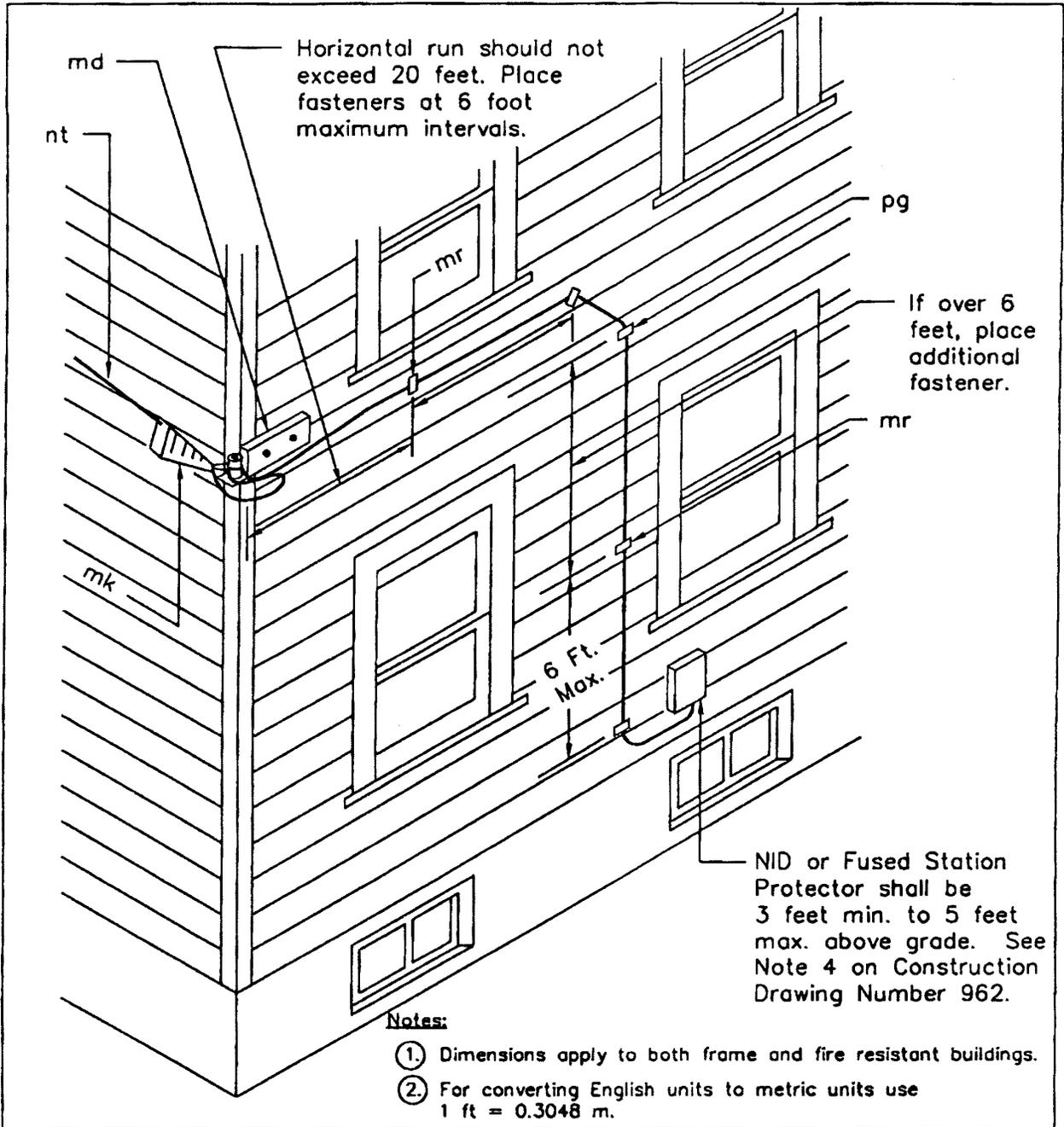
Notes:

- ① The first attachment of the buried wire to the building should be located approximately 4 inches above the ground. The remaining attachments shall be spaced approximately 14 inches apart.
- ② A porcelain or plastic tube shall be employed only when insulated attachments are required for support of aerial service wire on buildings.
- ③ Entrance hole shall be drilled to slope slightly upward. Except where a porcelain or plastic tube is required, all wires entering the hole shall be taped for a tight fit. When the aerial service wire approaches from above the entrance hole, a drip loop shall be made as shown.
- ④ Insert short piece of aerial service wire to cushion "C" knob.
- ⑤ Seal both ends of hole or conduit with duct seal.
- ⑥ For converting English units to metric units use 1 in. = 25.4 mm.

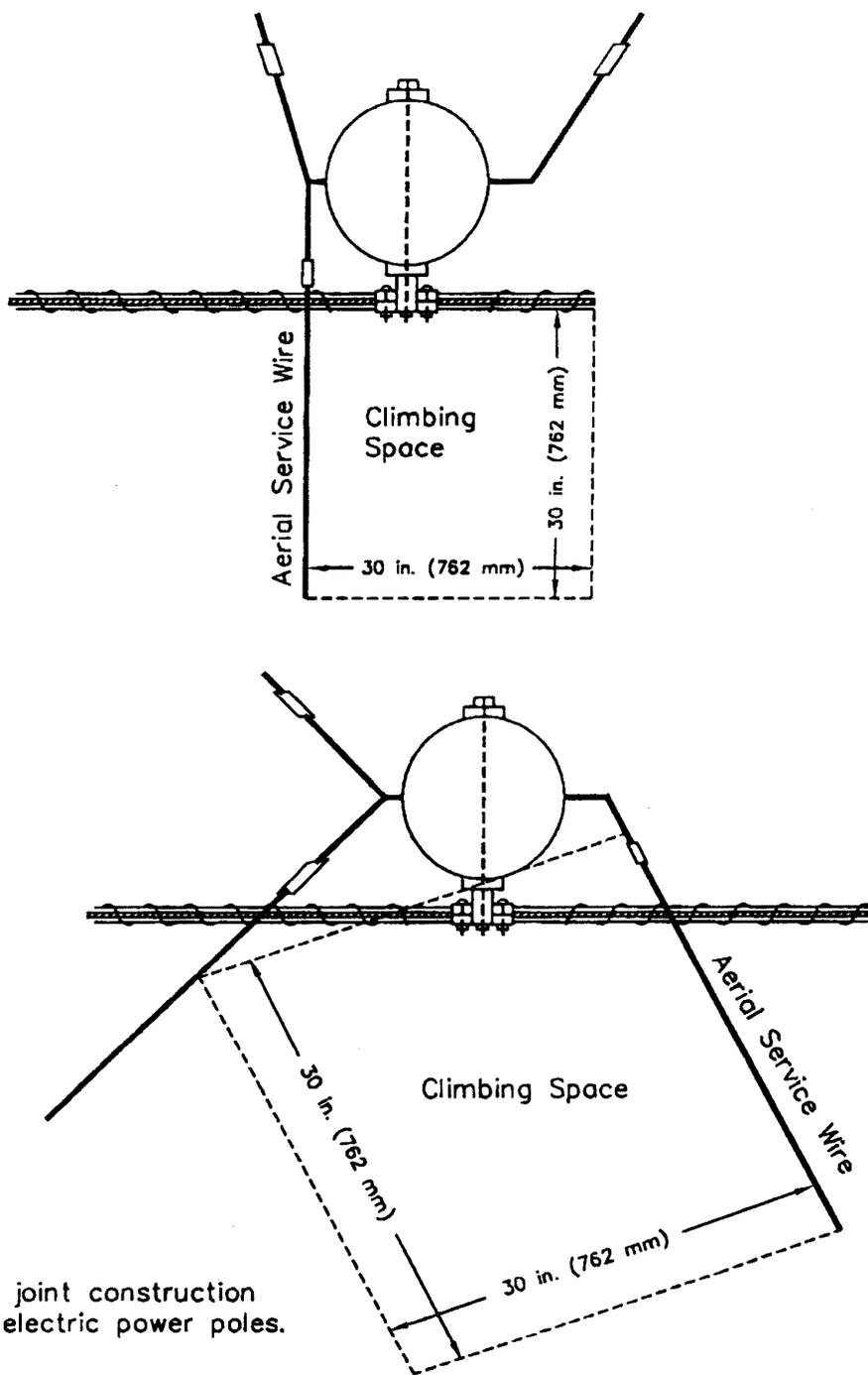


SKETCH C: Buried Service - Below Grade Entrance

ITEM	MATERIALS	ITEM	MATERIALS
*mr	Knob, insulator, "C"	*mw	Screw, wood
nt	Wire, aerial service	sa/sc	Wire or cable, filled, buried
-	Tube, plastic	sp	Duct seal
*np	Clamp, one-hole offset type		
RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES SERVICE ENTRANCES			
Scale: NTS		August 1997	
		510-2	



ITEM	MATERIAL	ITEM	MATERIAL
mk	Clamp, drop wire	nt	Wire, aerial service
*md	Bracket, corner	*pg	Screweyes, porcelain, insulated
*mr	Knob, "C"	*mr	Knob, insulator
RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES AERIAL SERVICE WIRE RUN ON BUILDINGS			
Scale: NTS		August 1997	
		513	



Note: For joint construction on electric power poles.

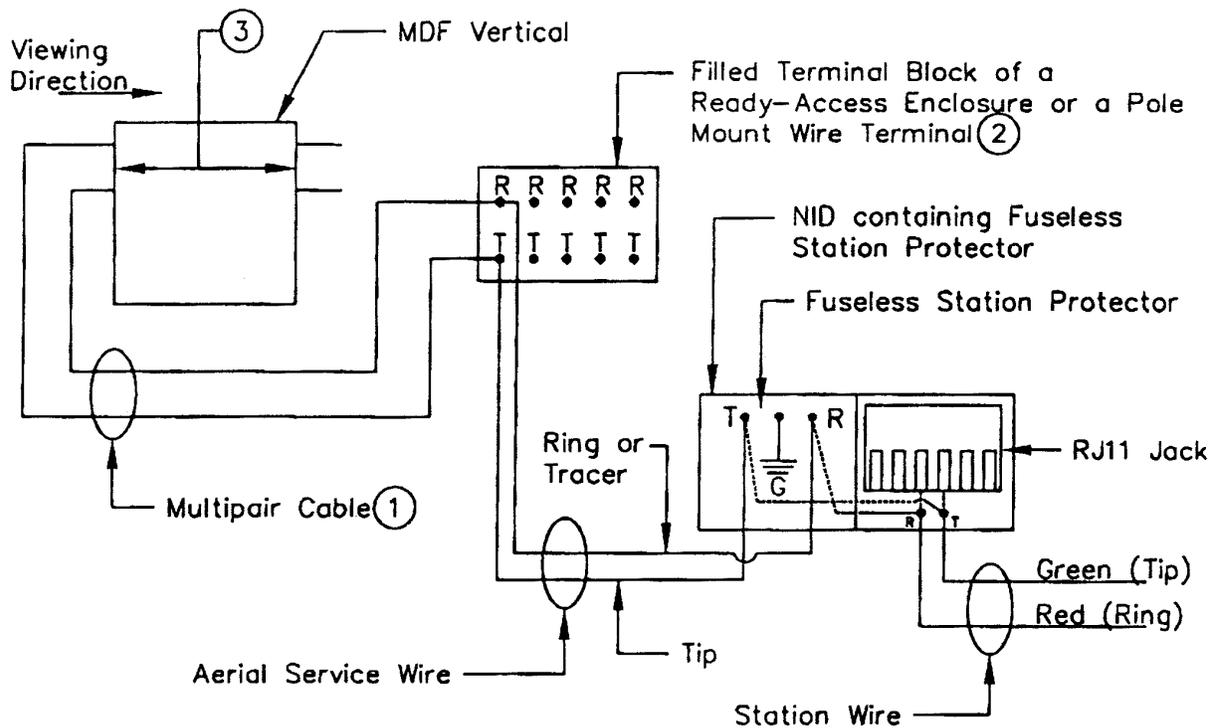
RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES
CLIMBING SPACE

Scale: NTS

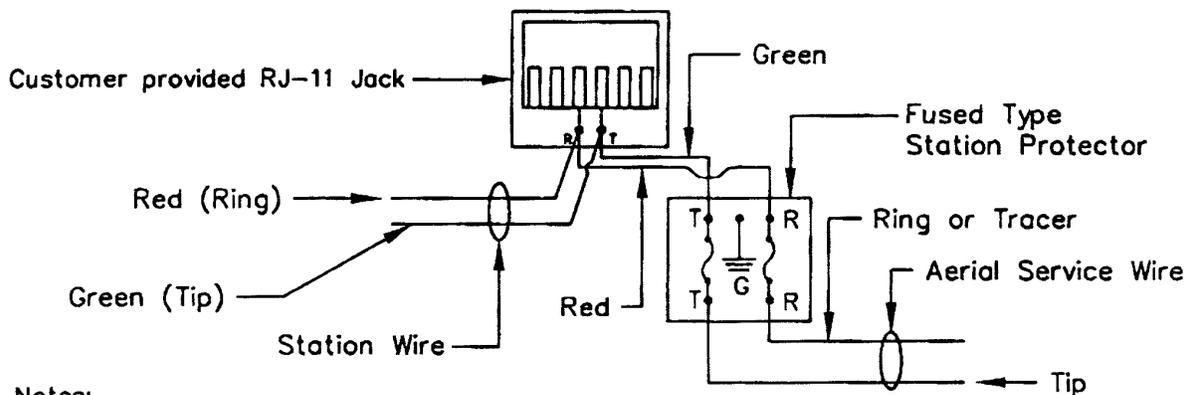
August 1997

702

Conductor Polarity Diagram For NID Incorporating Fuseless Station Protector



Conductor Polarity Diagram For Fused Station Protector



Notes:

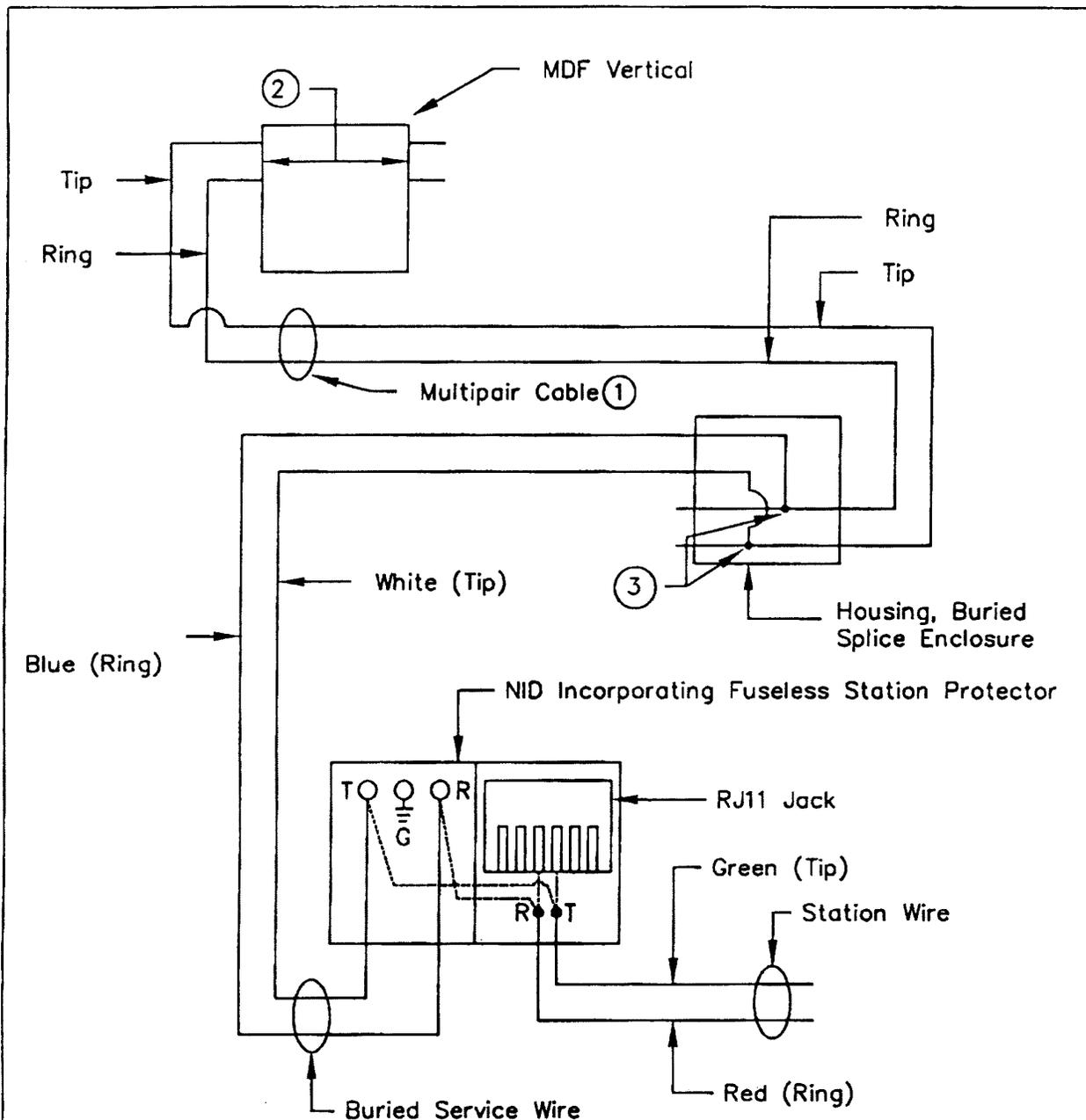
- ① Refer to appropriate cable specifications for tip and ring conductor identification.
- ② When facing the cable terminal the positive (tip) is on the left and the negative (ring) is on the right side of the pair.
- ③ Connections to be made in accordance with the manufacturer's instructions.

RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES
CONDUCTOR POLARITY (TIP AND RING) DIAGRAM
(AERIAL PLANT)

Scale: NTS

August 1997

815



Notes:

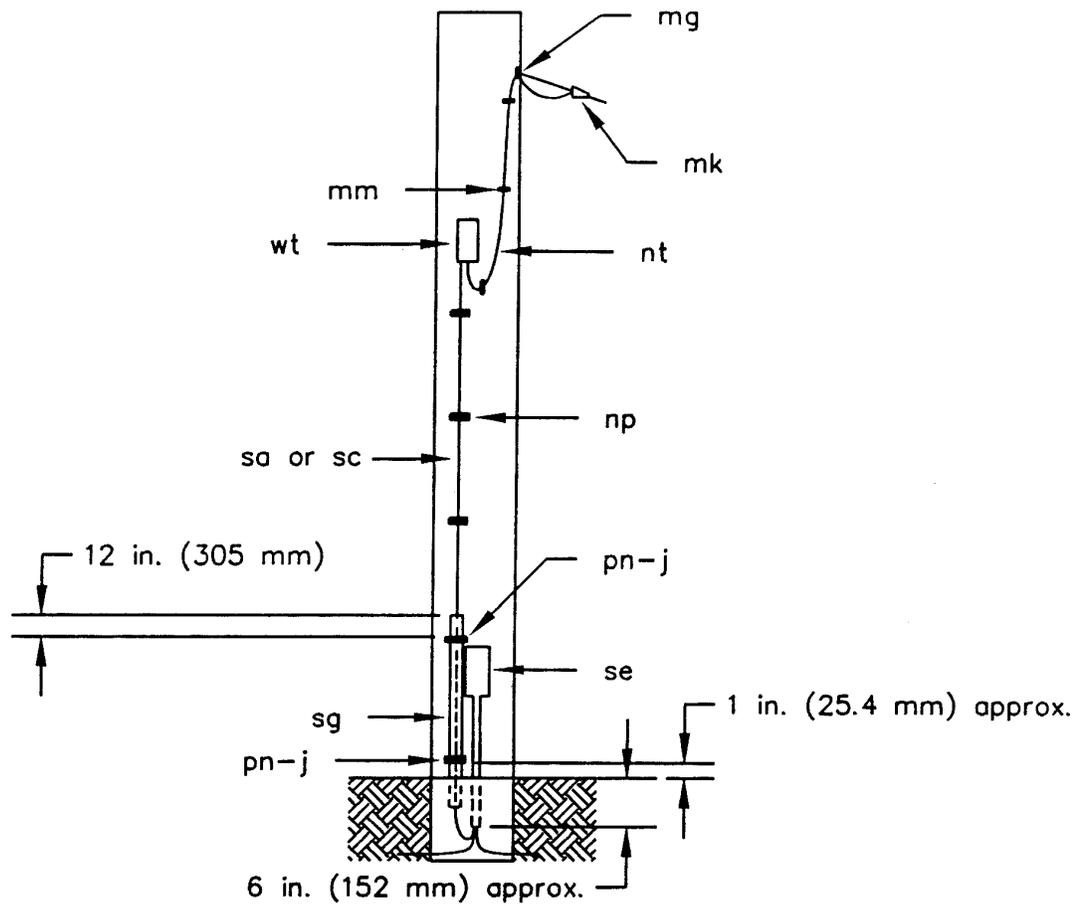
- ① Refer to appropriate cable specifications for tip and ring conductor identification.
- ② Connections to be made in accordance with the manufacturer's instructions.
- ③ Connections to be made in accordance with 7 CFR 1755.200, "RUS standard for splicing copper and fiber optic cables."

RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES
BURIED PLANT CONDUCTOR POLARITY DIAGRAM

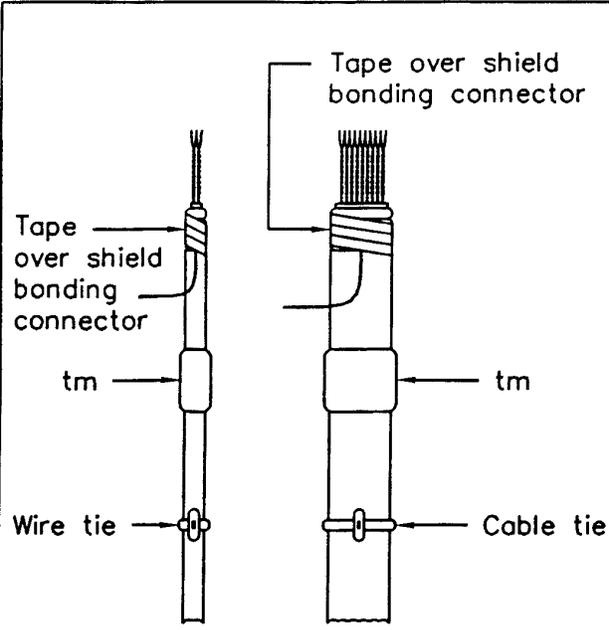
Scale: NTS

August 1997

815-1



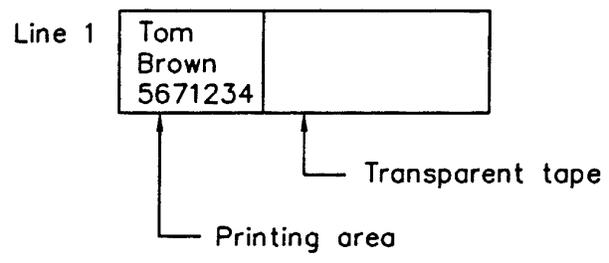
ITEM	MATERIALS	REQUIRED
wt	Terminal, wire, filled, unprotected, pole-mounted (specify pair size)	1
*pn	Strap, riser guard	2
*np	Clamp, cable (1-one hole, offset)	as req'd
sa or sc	Wire or cable, filled, buried	as req'd
mk	Clamp, drop wire	1
nt	Wire, aerial service	as req'd
*mg	Hook, drive	as req'd
*mm	Ring, drive	as req'd
se	Housing, outside plant	1
sg	Guard, riser, 1"ID*8'	as req'd
j	Screws, lag (size as required)	4
RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES AERIAL DROP WIRE TO BURIED PLANT		
Scale: NTS		August 1997
		912



Notes:

- ① Markers shall be installed on all buried wires and cables at each housing as shown in 7 CFR 1755.200.
- ② The marker shall be wrapped around the cable in a manner such that the printed portion of the marker is completely covered and protected by at least one layer of transparent tape. On cables too large for this to be accomplished with a single marker, a second marker shall be applied so that the clear tape of the second marker provides protection for the printed portion of the first. The information shall be legibly printed and shall be readily visible.
- ③ The markers shall contain the following information unless indicated otherwise by the Borrower or Borrower's Engineer.

Buried Service Wire Marker



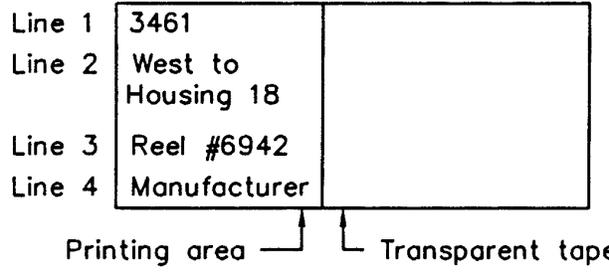
Buried Service Wire:

Line 1 - Subscribers identification (Such as: name, telephone number, or address)

Buried Cable or Wire:

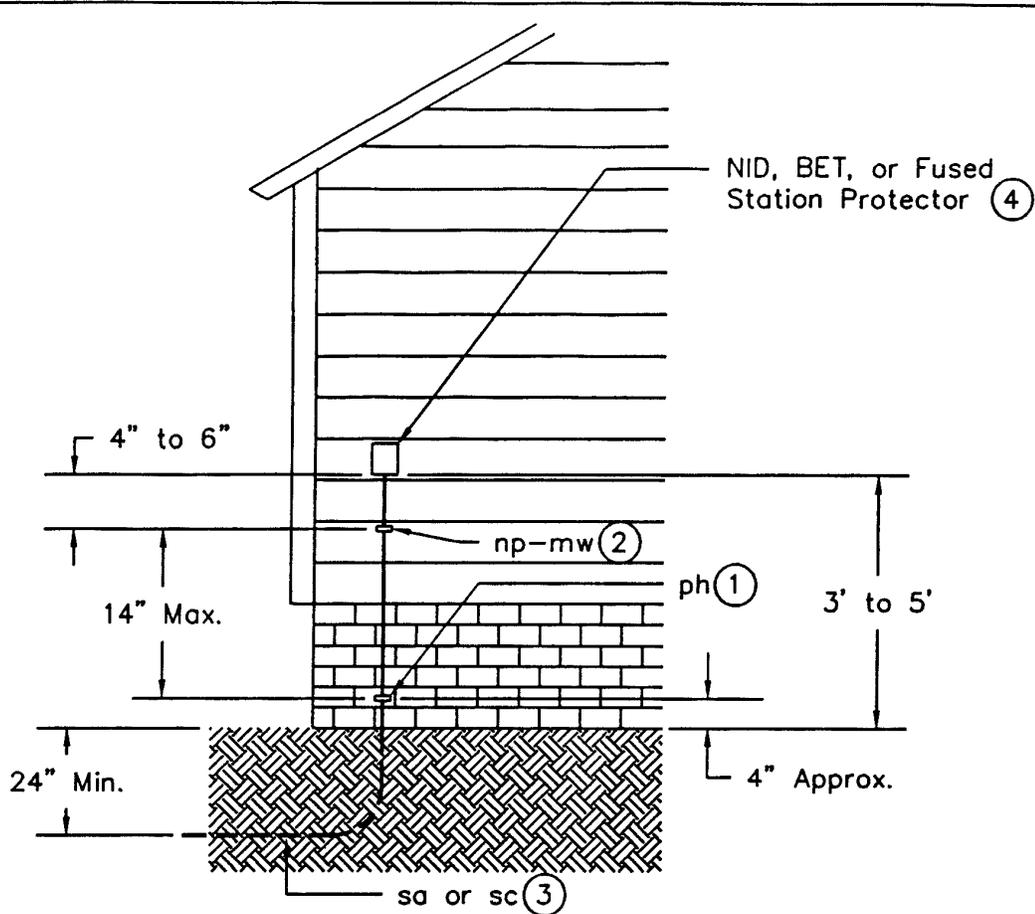
- Line 1 - Nearest sequential marking
- Line 2 - Direction of cable or wire
- Line 3 - Cable reel number
- Line 4 - Name of cable manufacturer

Buried Cable Marker



- ④ Other methods of directional marking may be used when specified by the Borrower or Borrower's Engineer.

ITEM	MATERIAL	ITEM	MATERIAL
*tm	Tape, marker		
RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES BURIED CABLE AND WIRE DIRECTIONAL MARKING			
Scale: NTS		August 1997	
		958	



Note:

- ① When mounting NID, BET, or fused station protector and clamps on masonry surface, use screw expansion anchors or equivalent manual or machine-driven devices.
- ② Attach filled buried service wire or cable to building with one-hole offset clamps spaced 14 in. max. apart. Where grounding conductor parallels service wire or cable, both wires may be run under the same attachment.
- ③ Place filled buried service wire or cable snug against building.
- ④ Details of NID, BET, or Fused station protector terminations are shown on Figures 10 through 16, and 19.
- ⑤ For converting English units to metric units use 1 in. = 25.4 mm and 1 ft = 0.3048 m.

ITEM	MATERIALS	ITEM	MATERIALS
-	NID, protected, station, outside	*rg	Wire, station
sa	Wire, filled, buried	*mw	Screw, stainless steel, wood
*ph	Anchor, expansion, screw	sc	Cable, filled, buried
*np	Clamp, one-hole offset type		

RURAL TELECOMMUNICATIONS CONSTRUCTION PRACTICES
BURIED WIRE SERVICE INSTALLATION ON BUILDINGS

Scale: NTS

August 1997

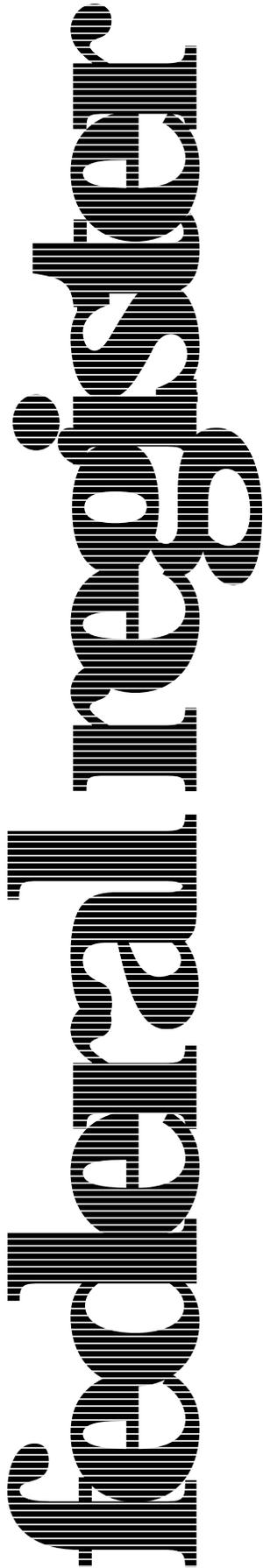
Dated: November 20, 1998.

Jill Long Thompson,

Under Secretary Rural Development.

[FR Doc. 98-32207 Filed 12-18-98; 8:45 am]

BILLING CODE 3410-15-C



Monday
December 21, 1998

Part III

**Office of
Management and
Budget**

**Alternative Approaches to Defining
Metropolitan and Nonmetropolitan Areas;
Notice**

OFFICE OF MANAGEMENT AND BUDGET

Alternative Approaches to Defining Metropolitan and Nonmetropolitan Areas

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA).

ACTION: Notice of intent to review the standards currently used to define metropolitan areas and to propose standards for defining nonmetropolitan areas following the 2000 census.

SUMMARY: OMB defines metropolitan areas (MAs) in the United States and Puerto Rico for statistical purposes, following published standards. Statistical purposes include the collection, tabulation, and publication of data by Federal agencies for geographic areas. Decisions related to the criteria used to define MAs are made by OMB in consultation with members of the Metropolitan Area Standards Review Committee (MASRC), a group representing various statistical agencies within the Federal Government. The last revision of the MA standards was issued in 1990 (see Appendix A). OMB currently is conducting a full review of the MA concept and standards.

This Notice describes potential revisions to the MA standards based on findings from the ongoing review. The Notice begins with a brief history of the standards and a discussion of why they may need to be revised. It then lists the findings of the review process to date, distinguishing between points of general agreement and questions still needing to be resolved. The Notice presents four approaches to defining metropolitan and nonmetropolitan areas that answer in varying ways the unresolved questions.

Issues for Comment: OMB is interested in receiving comments from the public on (1) the suitability of the current standards, (2) principles that should govern any proposed revisions to the standards, (3) reactions to the four approaches outlined in this Notice, and (4) proposals for other ways by which to define metropolitan and nonmetropolitan areas. In particular, OMB seeks responses to the following key questions that will determine how metropolitan and nonmetropolitan areas will be defined in the future:

- What geographic unit should be used as the "building block" for defining areas for statistical purposes?
- What criteria should be used to aggregate the geographic building blocks into statistical areas?

- What criteria should be used to define a set of statistical areas of different types that together classify all the territory of the Nation?

DATES: Comments must be received on or before February 12, 1999.

ADDRESSES: Written comments should be submitted to James D. Fitzsimmons, Population Division, Bureau of the Census, Washington, DC 20233-8800; fax (301) 457-2644.

Electronic Data Availability and Comments: This **Federal Register** Notice is available electronically from the OMB home page on the World Wide Web: <<<http://www.whitehouse.gov/WH/EOP/OMB/html/fedreg.html>>>. **Federal Register** Notices also are available electronically from the U.S. Government Printing Office web site: <<http://www.access.gpo.gov/su_docs/aces/aces140.html>>. Questions about accessing the **Federal Register** online via GPO Access may be directed by telephone to (202) 512-1530 or toll free to (888) 293-6498; by fax to (202) 512-1262; or by E-mail to <<gpoaccess@gpo.gov>>.

FOR FURTHER INFORMATION CONTACT: James D. Fitzsimmons, Chair, Metropolitan Area Standards Review Committee, (301) 457-2419, or E-mail <<pop.frquestion@ccmail.census.gov>>.

SUPPLEMENTARY INFORMATION:

Outline of Notice

Part I. Background

- A. What Is a Metropolitan Area?
- B. What Is the Purpose of Defining Metropolitan Areas?
- C. How Has the Metropolitan Area Concept Evolved?
- D. Why Should the Metropolitan Area Standards Be Reviewed for Possible Revision?

Part II. Issues Posed by the Review

- A. Points of General Agreement
- B. Questions Remaining to Be Resolved

Part III. Form and Function in Metropolitan and Nonmetropolitan Area Definitions

- A. Functional Integration
- B. Metropolitan Character
- C. Central Cores
- D. Geographic Building Blocks for Metropolitan and Nonmetropolitan Areas

Part IV. Alternative Approaches to Defining Metropolitan and Nonmetropolitan Areas

- A. A Commuting-Based, County-Level Approach to Defining Metropolitan and Nonmetropolitan Areas
- B. A Commuting-Based, Census Tract-Level Approach to Defining Metropolitan and Nonmetropolitan Areas
- C. A Directional Commuting, Census Tract-Level Approach to Defining Metropolitan and Nonmetropolitan Areas
- D. A Comparative Density, County-Level Approach to Defining Statistical Areas

Part V. Additional Issues for Consideration

- A. Accounting for Residual Areas
- B. Development of Multiple Sets of Statistical Areas
- C. Settlement Types Within Metropolitan and Nonmetropolitan Areas

Part VI. Sources Cited

Part VII. Frequently Used Terms

- #### Appendices
- A. Revised Standards for Defining Metropolitan Areas in the 1990s
 - B. OMB Memorandum M-94-22, "Use of Metropolitan Area Definitions"
 - C. Summary of the Conference on New Approaches to Defining Metropolitan and Nonmetropolitan Areas

Part I. Background

A. What Is a Metropolitan Area?

Currently, an MA consists of a core area containing a large population nucleus, together with adjacent communities having a high degree of social and economic integration with that core. MAs generally include a city or a Census Bureau-defined urbanized area (UA) with 50,000 or more inhabitants. The county or counties that contain the large city or the UA are the central counties of the MA. Additional outlying counties are included in the MA if the counties meet specified requirements of commuting to or from the central counties and other selected requirements of metropolitan character. The term "metropolitan area" is a collective term that refers to metropolitan statistical areas (MSAs), consolidated metropolitan statistical areas (CMSAs), and primary metropolitan statistical areas (PMSAs). The current (1990) standards for defining MAs are included as Appendix A of this Notice.

B. What Is the Purpose of Defining Metropolitan Areas?

MAs are a Federal statistical standard designed solely for the preparation, presentation, and comparison of data. Before the MA concept was introduced in 1949 with Standard Metropolitan Areas (SMAs), inconsistencies between statistical area boundaries and units made comparisons of data from Federal agencies difficult. Thus, MAs are defined according to specific, quantitative criteria (standards) to help government agencies, researchers, and others achieve uniform use and comparability of data on a national scale.

OMB recognizes that some Federal and state agencies are required by statute to use MAs for allocating program funds, setting program standards, and implementing other aspects of their programs. In defining MAs, however, OMB does not take into account or attempt to anticipate any of these nonstatistical uses that may be

made of MAs or their associated data. Agencies that elect to use MAs for such nonstatistical purposes are advised that the standards are designed for statistical purposes only and that any changes to the standards may affect the implementation of programs. This policy was documented in OMB memorandum M-94-22, dated May 5, 1994, entitled "Use of Metropolitan Area Definitions" (see Appendix B).

C. How Has the Metropolitan Area Concept Evolved?

As early as the first years of the twentieth century, the Federal Government recognized the need to identify large cities and their surrounding areas as single geographic entities and to provide data at that scale for social and economic analysis. Before the adoption of the MA concept in the late 1940s, several other kinds of related geographic areas were defined. These areas were based on different criteria and used by Federal agencies for data reporting purposes. Among these areas were the following:

Industrial Districts. Perhaps the first extensive attempt by the Federal Government to define areas based on a metropolitan concept was the identification of industrial districts for the 1905 Census of Manufactures. The Census Bureau published manufacturing and population data for 13 industrial districts composed of minor civil divisions (MCDs).

Metropolitan Districts. When adopted by the Census Bureau in 1910, each metropolitan district generally comprised a central city of at least 200,000 persons and all adjacent MCDs with population densities of at least 150 persons per square mile. Beginning in 1930, metropolitan districts were defined for all cities of at least 50,000 persons, with the additional requirement that each metropolitan district have a population of at least 100,000. Metropolitan districts were defined in terms of population density; measures of functional integration (such as commuting) were not used.

Industrial Areas. Industrial areas were introduced by the Census Bureau in the late-1920s for the Census of Manufactures to provide a coherent, integrated unit for reporting data related to industrial activity. Each industrial area comprised a county containing an important manufacturing city and adjacent counties with significant concentrations of manufacturing industries. Each of these areas usually employed at least 40,000 factory wage earners. In 1931, there were 33 recognized industrial areas.

Labor Market Areas. Before 1950, labor market areas (LMAs) were defined by the Bureau of Employment Security and consisted of counties and MCDs. Since 1950, the Bureau of Labor Statistics (BLS) has been responsible for defining LMAs. Current LMA definitions use MAs as starting points and consist of aggregations of counties (see below).

Lack of geographic comparability limited the use of data reported for these and other areas. In the mid-1940s, initial efforts to reconcile metropolitan districts and industrial areas failed, in part because of tensions between two groups, demographic data providers and economic data providers. The former wanted to continue using sub-county geographic building blocks to achieve greater precision and to maintain historical comparability with metropolitan districts. The latter had difficulty identifying precise locations of establishments below the county level and also had concerns about the availability and confidentiality of sub-county data.

The Interagency Committee on Standard Metropolitan Areas decided in March 1948 that counties would form the building blocks for SMAs. The Committee cited the greater availability of data for counties and concluded that use of a unit other than the county would restrict the amount of information available for SMAs and, consequently, would reduce the usefulness of the concept.

SMAs were first used for reporting data from the 1947 Census of Manufactures. The conceptual basis for the SMA was a community of nonagricultural workers who resided in and around a large city and were socially and economically linked with the central city as measured by commuting flows and telephone calls.

Changes to the standards since their adoption for the 1950 decennial census are detailed in Table 1. Few significant changes were made through the 1960s; those that were made affected the designation of central cities forming the cores of MAs. The standards became more complex in the 1970s and 1980s, in part to recognize the increasing variation in patterns of urban settlement. Requirements for central cities were adjusted for the 1980s, with the result that more cities were designated as central. Additional changes at that time meant MAs included fewer outlying counties, which needed to satisfy commuting requirements as well as a number of other criteria, including: population growth rate, percent urban population, percent of population living inside a

UA, and overall population density. The 1990 (current) standards differ only modestly from those of the previous decade.

Since their adoption in the late 1940s, the MA standards have acknowledged that within states in New England, cities and towns are administratively more important than counties, and that a wide variety of data are compiled for these areas. For these reasons, cities and towns have been used as the building blocks of MAs in New England. The nonagricultural worker requirement that was present in the earlier standards was not applied in New England. Also, population density requirements differed between New England and elsewhere.

The standards for New England MAs remain different from the standards for the rest of the country. New England County Metropolitan Areas' county-based alternatives to the city-and town-based MAs of that region—were introduced in 1975 to facilitate comparisons between areas in New England and elsewhere.

In addition to MAs, other statistical area classifications currently are in use. These include:

Labor Market Areas. BLS currently defines LMAs, which are used for a variety of purposes, including reporting local area unemployment statistics. LMAs follow county boundaries except in New England, where towns and cities are the geographic building blocks. BLS defines major LMAs based on MSAs and PMSAs as defined by OMB. Outside of MAs, BLS defines small LMAs by aggregating counties (or towns) on the basis of commuting. LMAs are non-overlapping and geographically exhaustive.

Economic Areas. The Bureau of Economic Analysis (BEA) defines economic areas (EAs) for reporting geographically detailed economic data and for regional economic analysis. In delineating EAs, BEA identifies economic nodes. These nodes consist of 310 MSAs and PMSAs (NECMAs in New England) plus 38 nonmetropolitan counties. Each county not included in these nodes is analyzed to determine the node with which it is most closely associated. Measures such as commuting patterns and regional newspaper circulation are used to aggregate counties into "component economic areas," which are then aggregated to form the final EAs. EAs are county-based, nonoverlapping, and geographically exhaustive.

In sum, the MA concept is part of an historical lineage of statistical geographic areas and is one of several

current areas used by Federal agencies for reporting data.

D. Why Should the Metropolitan Area Standards Be Reviewed for Possible Revision?

The MA standards, like other statistical standards, require review to ensure their continued usefulness. Previous reviews and revisions of the MA standards were completed in 1958, 1971, 1975, 1980, and 1990.

Comments received in recent years indicate there are four widely held opinions regarding the current MA standards that argue for their revision:

- Many users believe the current standards are overly complex and burdened with *ad hoc* criteria. Simplifying the standards would improve the chances that the system and its associated data would be understood.

- The MA concept has not changed significantly since 1950, yet population distribution and activity patterns in the United States have changed as a result of changes in transportation and other technologies, home/workplace relationships, and patterns of retail and other commercial location. Revised MA standards may better represent

increasingly decentralized settlement and activity patterns.

- Computer-related advances in data collection, storage, and analysis, especially in technologies related to data geocoding (data linked to its geographic location of occurrence), make it feasible to consider a sub-county unit as the basic geographic building block for constructing statistical areas to represent settlement.
- MAs do not exhaustively classify the territory of the United States. As a result, social and economic linkages within the residual, nonmetropolitan territory are not taken into account appropriately in statistical data series.

Table 1
Evolution of Metropolitan Area Standards By Decade (1950s - 1960s)

Decade	Area Name	Central City and Central Core Criteria	Minimum Measures of Integration for Outlying County	Minimum Measures of Metropolitan Character for Outlying County
1950s	Standard Metropolitan Area	City of 50,000 or more population	<ul style="list-style-type: none"> • 15% or more commuting to central county, OR • 25% or more of the jobs in the county are accounted for by commuting from central county, OR • at least four phone calls per subscriber per month to central county 	<ul style="list-style-type: none"> • 10,000 or more nonagricultural workers, OR • 10% or more of the nonagricultural workers in the MA, OR • 50% or more of population residing in MCDs with population density of at least 150 persons per square mile and contiguous to central city • two-thirds or more of labor force must be nonagricultural
1960s	Standard Metropolitan Statistical Area	City of 50,000 or more population, OR two contiguous cities with combined population of 50,000 or more	<ul style="list-style-type: none"> • 15% or more commuting to central county, OR • 25% or more of the jobs in the county are accounted for by commuting from central county 	<ul style="list-style-type: none"> • 75% or more of labor force must be nonagricultural, AND • 50% or more of population residing in contiguous MCDs with population density of at least 150 persons per square mile, OR • nonagricultural employment is either equal to at least 10% of the nonagricultural employment of the central county or at least 10,000, OR • number of nonagricultural workers residing in county is either at least 10% of nonagricultural workers residing in central county or at least 10,000

Table 1 (continued)
Evolution of Metropolitan Area Standards By Decade (1970s-1980s)

Decade	Area Name	Central City and Central Core Criteria	Minimum Measures of Integration for Outlying County	Minimum Measures of Metropolitan Character for Outlying County
1970s	Standard Metropolitan Statistical Area	City of 50,000 or more population, OR city of at least 25,000 population together with contiguous places of population densities of at least 1,000 persons per square mile having a combined population of at least 50,000 in a county of at least 75,000 population	30% or more commuting to central county	<ul style="list-style-type: none"> • 75% or more of the labor force must be nonagricultural If less than 30% commute to central county, must meet two of the following: <ul style="list-style-type: none"> • 25% or more of population urban • 15% population growth rate • density of 50 or more persons per square mile and one of the following: <ul style="list-style-type: none"> • 15% or more commuting to central county • 15% or more commuting from central county • 20% or more commuting exchange with central county
1980s	<ul style="list-style-type: none"> • Metropolitan Statistical Area (MSA), Consolidated Metropolitan Statistical Area (CMSA), • Primary Metropolitan Statistical Area (PMSA), • New England County Metropolitan Area (NECMA) 	<ul style="list-style-type: none"> • UA of at least 50,000 population • If largest city has less than 50,000 population, MSA/CMSA must have at least 100,000 population • Central cities include largest city in MSA AND each city of at least 250,000 population or 100,000 workers AND each city of at least 25,000 population and 75 jobs per 100 workers and less than 60% out commuting AND each city of at least 15,000 population that is at least one-third the size of the largest central city and meets employment ratio and commuting percentage above. 	Commuting: 50% or more and-----> 40% or more and-----> 25% or more and-----> 15% or more and----->	Character: 25 or more persons per square mile, OR 35 or more persons per square mile, OR 35 or more persons per square mile and one of the following: <ul style="list-style-type: none"> • 50 or more persons per square mile • 35% or more urban population • 10% or more of population, or at least 5,000 persons in UA, OR 50 or more persons per square mile and two of the following: <ul style="list-style-type: none"> • 60 or more persons per square mile • 35% or more urban population • population growth rate of at least 20% • 10% or more of population, or at least 5,000 persons in UA

Table 1 (continued)
Evolution of Metropolitan Area Standards By Decade (1990s)

Decade	Area Name	Central City and Central Core Criteria	Minimum Measures of Integration for Outlying County	Minimum Measures of Metropolitan Character for Outlying County
1990s	Metropolitan Areas • MSA • CMSA • PMSA • NECMA	<ul style="list-style-type: none"> • City of at least 50,000 population, OR • UA of at least 50,000 population in an MA of at least 100,000 population • Central cities include largest city in MSA/CMSA AND each city of at least 250,000 population or at least 100,000 workers AND each city of at least 25,000 population and at least 75 jobs per 100 workers and less than 60% out commuting AND each city of at least 15,000 population that is at least 1/3 size of largest central city and meets employment ratio and commuting percentage above AND largest city of 15,000 population or more that meets employment ratio and commuting percentage above and is in a secondary noncontiguous UA AND each city in a secondary noncontiguous UA that is at least 1/3 size of largest central city of that UA and has at least 15,000 population and meets employment ratio and commuting percentage above. 	<p>Commuting:</p> <ul style="list-style-type: none"> 50% or more and-----> 40% to 50% and-----> 25% to 40% and-----> 15% to 25% and-----> 15% to 25% and-----> 	<p>Character:</p> <ul style="list-style-type: none"> 25 or more persons per square mile, or 10% or more of population, or at least 5,000 persons in UA OR 35 or more persons per square mile, or 10% or more of population, or at least 5,000 persons in UA OR 35 or more persons per square mile and one of the following: <ul style="list-style-type: none"> • 50 or more persons per square mile • 35% or more urban population • 10% or more of population or at least 5,000 persons in UA, OR 50 or more persons per square mile and two of the following: <ul style="list-style-type: none"> • 60 or more persons per square mile • 35% or more urban population • population growth rate of at least 20% • 10% or more of population, or at least 5,000 persons in UA Less than 50 persons per square mile and two of the following: <ul style="list-style-type: none"> • 35% or more urban population • population growth rate of at least 20% • 10% or more of population, or at least 5,000 persons in UA

Part II. Issues Posed by the Review

The MA standards are reviewed for possible revisions before each decennial census. The current review began early in this decade and already has included commissioned research, publications, presentations, discussions, and a conference (see Appendix C for notes from the 1995 "Conference on New Approaches to Defining Metropolitan and Nonmetropolitan Areas"). This review process has elicited the views of Federal Government data providers, data users in the private and academic sectors, and other analysts who use MA data and definitions. Results to date include both points of general agreement and questions remaining to be resolved.

A. Points of General Agreement

There seems to be general agreement on the following:

- The Federal Government should continue to define standard statistical areas at the metropolitan level.
- Familiar components of settlement, such as those represented by today's MA definitions, should be in evidence in a new system.
- Revised standards should broaden territorial coverage by including and officially recognizing nonmetropolitan components of the settlement system.
- These statistical areas should be defined according to simplified standards that are applied consistently in all parts of the country using the same geographic building blocks.
- If the revised standards define metropolitan and nonmetropolitan areas using sub-county building blocks, an associated, alternative set of county-based areas also is desired.

B. Questions Remaining to Be Resolved

1. What criteria should be used to define areas that exhaust the territory of the Nation?

One criticism of the current MA standards is that they do not account for all of the territory of the United States. Although tremendous variation in settlement patterns exists throughout the country, the current system defines individual MAs and leaves all territory outside MAs simply as "nonmetropolitan." It has been suggested that all parts of the U.S. territory, from the most to the least populated, should be assigned to a statistical area at the metropolitan or nonmetropolitan level. One approach to account for more of the country's territory would define statistical areas around cores of some minimum size that contain less than the 50,000 population minimum required by

current MAs. Reducing the required core population threshold for statistical areas, however, probably still would leave some residual territory, the amount dependent on the core size requirement.

Another approach would be to classify areas based on a measure of settlement form such as population density. This approach would account for all of the territory of the country, although some of the resulting statistical areas probably would be small in geographic extent, population size, or both.

A related issue is the classification of types of locales, such as inner city, suburban, exurban, and rural, and whether such types should be identified within metropolitan and nonmetropolitan areas. The definitions of MAs in the past have not included such categories.

2. What geographic unit should be used as the building block for defining statistical areas?

MAs currently consist of entire counties, except in New England where towns and cities form the building blocks. Problems with using counties in this capacity have been apparent since the earliest discussions of MAs, as revealed in this 1946 comment on the relative merits of the MCD-based metropolitan district program:

* * * [T]he metropolitan district, based on small subdivisions of a county, comes much closer to representing the central concept of a metropolis and its satellite territory than does the metropolitan county or group of counties. The metropolitan county arose as a mere approximation to the metropolitan district, made necessary by the fact that intercensus population data were compiled on a county rather than on a minor civil division basis. The use of smaller territorial units than metropolitan counties * * * leads to a much more precise analysis of labor and housing markets (Bureau of the Census 1946).

These observations are still pertinent today. Wide regional variation in county size presents a problem when comparing data for different MAs. Further, the large size of some counties can mask smaller, densely populated clusters of settlement, so that patterns of social and economic linkages within counties are difficult to recognize. The use of smaller geographic building blocks, such as county subdivisions or census tracts, might help alleviate these problems.

Although there were critical comments, a key advantage to using counties as the geographic building block also was apparent in the 1940s: a

wide range of data is available for counties, with the result that areas composed of counties also have considerable data available for them. (The range of Federal Government data available at the county level that also is, or could be, available for smaller areas is under review.) Counties also are familiar to data users, and their relatively small number may be seen as an advantage. These issues are taken up in more detail in Part III.D.

3. What criteria should be used to aggregate the geographic units into statistical areas?

The current MA system is based on the observation that large urban centers have both form and function. The form, or structural component—what we see on the landscape—is measured using such variables as population size and density. Settlement form largely determines the identification of central cities and central counties. The functional component—interactions of people and activities among places as measured by daily commuting flows—is key to the identification of qualified outlying counties. Substantial agreement exists that population density (or possibly housing unit density) and daily commuting continue to be the best means for defining areas consistently nationwide. At the same time, however, many observers concur that both the structural and functional components of cities and their surroundings have changed significantly since MAs were first defined. These components also have grown increasingly complex and difficult to measure. Part IV presents a classification based solely on measures of form (see Part IV.D), as well as other classifications (see Parts IV.A, B, and C) based on a combination of measures of form (to identify central cores) and measures of function (to identify outlying areas integrated with the core).

4. Should the definition process follow strictly statistical rules, or should it take into account local opinion?

The current standards take local opinion into account in specified circumstances. Application of strictly statistical rules for definition purposes would have the advantage of minimizing ambiguity and making definition of areas less time-consuming. Consideration of local opinion, however, can provide room for accommodating some issues of local significance without impairing the integrity of the system.

5. What should be the frequency of updating?

In the past, many observers have argued for minimizing changes in area definitions during the course of a decade to ensure that data bases can be maintained consistently and economically. The counter-argument is that definitions should be updated to reflect changed conditions as rapidly as the data permit. The frequency of updating depends in part on decisions concerning basic geographic units, criteria for aggregation, and, ultimately, data availability. Recent practice has been to review areas annually on the basis of Census Bureau population estimates and special censuses.

Part III. Form and Function in Metropolitan and Nonmetropolitan Area Definitions

Metropolitan and nonmetropolitan areas have characteristics that are structural, relating to population settlement form (population density, for instance, is a structural measure), and functional, reflecting geographic patterns of social and economic linkages that contribute to the development of an entire area (examples include daily commuting patterns and shopping trips). If a metropolitan and nonmetropolitan classification is purely structural, such as would be the case with areas based solely on population density (and as was the case with metropolitan districts before 1950), then only the degree of settlement is considered. Settlement form sometimes corresponds to patterns of activity and can serve as a surrogate for functional elements. If a system is purely functional and defined solely by measuring activity, then there is no clear depiction of the urban center from which influences arise and around which activity takes place. Current MAs make use of both structural and functional measures.

This portion of the Notice addresses the topics of functional integration, metropolitan character (structural characteristics), central cores, and geographic units used to define metropolitan and nonmetropolitan areas. Throughout this discussion, the phrase "metropolitan and nonmetropolitan areas" means those areas defined around urban centers of varying size and complexity. "Metropolitan" refers to those areas defined around larger cores (current MAs have cores with at least 50,000 population); "nonmetropolitan" refers to areas defined around smaller cores. These terminology conventions are for

the immediate purposes of this discussion.

A. Functional Integration

1. Introduction

MAs have represented areas of urban influence extending beyond city limits. The concept of the MA—a core area containing a large population nucleus, together with adjacent areas that have substantial measurable interactions with that core—relies heavily on the notion of functional integration in determining geographic extent. This section discusses metropolitan and nonmetropolitan area functional integration, identifying commuting as the most appropriate indicator of functional integration.

2. Increasing Complexity of Commuting Patterns

The functional measure used in the MA standards has been the daily journey to work. Commuting identifies the extent of each MA in an equitable and uncomplicated way. By establishing place-to-place links between workers' homes and places of employment, commuting has provided a measure of the economic interactions within an area. MAs are units with distinctive identities based, in part, on where people live and where they go to work.

Recently, however, some scholars have suggested that as the United States becomes more interdependent, both internally and with the rest of the world, the concept of metropolitan functional integration needs to be examined more closely (Berry 1995). In addition, the increasing popularity of working at home raises questions about the relevance of commuting in defining metropolitan and nonmetropolitan areas.

Researchers (Fisher and Mitchelson 1981, Lewis 1983, Gordon and Richardson 1996, Dear and Flusty 1998) have commented on the growing complexity of metropolitan form and commuting patterns. Harvey (1989) and Fishman (1990) have noted changes in urban form that reflect larger economic forces. These changes call into question the dominance of a large population center over adjacent communities that have high levels of social and economic interactions with the center. Others, like Pressman (1985) and Castells (1989), have identified a new, broader functional integration, citing a variety of technological innovations, including: (1) the expansion of cellular phone and Internet use; (2) the global supremacy of American entertainment, news, and advertising; (3) the market swings driven by political events in distant

countries; (4) the migration of factory out-sourcing and back-office operations to low-wage countries; and (5) the speed and flexibility of global finance and ability to move large sums of money around the world instantaneously. All of these developments suggest a change whereby individual places and areas become less important than the network structure itself, and small places become single nodes in a complex system of social and economic linkages created and organized under constantly shifting economic and political circumstances. These innovations point to the growing interdependence of places in general and some blurring of individual place identities.

It is equally clear, however, that the Nation remains the sum of many economic and social parts. Local and regional economies and labor markets continue to show different specialities and levels of performance. Local and regional character still exists, built in part upon identification of place of residence or work and awareness of the locality's history and geography.

The challenge in defining metropolitan and nonmetropolitan areas is to select appropriate functions or activities that capture economic and social integration within areas and the differences between areas. Before reconsidering commuting as a measure of functional integration, the following section discusses alternative measures of spatial interaction.

3. Alternative Measures

- The Internet provides the newest major medium for information flows across the United States. The aspatial nature of the Internet, however, poses difficulties for measuring functional integration, which assumes the ability to identify the origins and destinations of flows. The origin of each Internet session—the location of the user—generally is identifiable, but the destination is unclear: is it the location of the service provider, the location of the server on which a web page resides, or the physical location of the owner of the web page? Although Internet use generally involves a telephone call to a specific provider location, this is only to gain access to the wider web; the distance between the user and the location of the owner of the accessed web page is unimportant. Because the link between a user and a web page recedes into the background, such linkages defy identification as measures of functional integration between communities.

- Telephone traffic patterns were used in early MA definitions until commuting data became more widely

available and standardized. Issues concerning telephone service coverage largely have disappeared in recent decades.

- Cellular telephone systems provide a measure of the functional extent of metropolitan and some nonmetropolitan areas and highlight the role played by highway corridors. Coverage is uneven, however, due to competition between companies and the spatial segregation of different companies' customers. Standardizing the rapidly changing information about users and coverage areas is difficult.

- Media markets, or penetration patterns, offer an image of regions to marketers and advertisers, but many of the data are proprietary and exhibit uneven coverage. The advent of the Internet, national editions of newspapers, and cable and satellite television blurs the traditionally local flavor of media markets.

- Consumer spending could, in principle, provide a view of the functional extent of regional and metropolitan areas. Consumer expenditure surveys, however, do not provide much data for individual metropolitan and nonmetropolitan areas because of limited sample sizes.

In general, these alternative measures of functional integration are not as useful as commuting patterns because they: (1) sometimes depend on data that are not collected by Federal agencies and that may be subject to errors of unknown kind and magnitude; (2) sometimes are not generally accessible by the public (i.e., the measures are proprietary, sometimes copyrighted or for sale); (3) are without observations that are evenly distributed across the U.S. territory; and (4) are not measurable in terms of specific, common geographic units.

4. Continued Usefulness of Commuting Patterns as a Measure

Notwithstanding criticism of continued reliance on information about the daily journey to work, it remains the most reliable and broadly available measure of functional integration for two principle reasons:

- Commuting to work is still a significant activity for the vast majority of workers. Recent years have seen a rise in alternative work-residence arrangements. Shortened or irregular work weeks, flextime, full- and part-time work at home, and telecommuting some or all of the time are gaining in importance. The Census Bureau reported a 55 percent increase in those working at home between 1980 and 1990, from 2.2 million to 3.4 million workers. Still, those working at home

represented only three percent of all workers in 1990. Ninety-seven percent of workers still commute to work and have separate location spheres for place-of-work and place-of-residence. This long-term pattern reflects the nature of many jobs, for instance, where service provision is location-specific or product manufacture occurs in a fixed location.

- The spatial patterns of commuting are more complex today than in previous decades, but no less important. The spatial structure of the urban environment is less consistently monocentric than was the case in the early part of the twentieth century. Given the diffusion of persons and jobs away from the core, commuting patterns are less likely to resemble a hub-and-spoke model than a polycentric structure of multiple employment nodes serving a region's needs. The increased complexity of these patterns, however, has not meant a decrease in their importance.

Over time, commuting patterns in many areas have become more complicated to delineate. Jobs have followed people out of the central city (and the central county), but the traditional urban core, with an employment-intensive central business district, still exists amidst high job growth in suburban areas. Commuting often is multidirectional, with no single dominant flow. The net commuting flow between any two areas may be quite low, while the gross flows may be substantial.

Work is still a dominant organizing activity in most people's lives. While urban settlement form has changed, the basic movement of workers traveling to a different location from where they live continues. The geographic extent of metropolitan and nonmetropolitan areas "depends upon the commuting range, itself historically determined by social and technological conditions" (Harvey 1989). The journey-to-work activity is nearly universal, even as the geographic nature of commuting has changed in recent decades. The challenge is to model and measure the current nature of commuting patterns to delineate metropolitan and nonmetropolitan areas.

B. Metropolitan Character

1. Introduction

Since SMAs were first defined in 1949, counties have needed to exhibit, in addition to integration (as measured by commuting), other attributes referred to collectively as "metropolitan character" to qualify as outlying. As the March 1958 MA standards noted, "The criteria of metropolitan character relate

primarily to the attributes of the county as a place of work or as a home for a concentration of non-agricultural workers." In practice, this has meant an emphasis primarily on population density as one aspect of what makes an outlying county "metropolitan." This section addresses the suitability of including measures of metropolitan character—focusing on population density—in standards for defining areas in the next decade.

2. Density and Other Measures of Metropolitan Character

The initial inclusion of population density in the MA criteria reflected some common, contemporary assumptions about U.S. settlement patterns in 1949:

- An easily understood built environment: cities were densely settled centers of population and economic activity set against a backdrop of sparsely settled territory.

- Population density as a proxy for distance from the central business district: population density declined as distance from an urban center increased.

- Relationship of distance from the urban center and population density with social, economic, and cultural attributes of the population: urban and rural communities, for example, were understood to be different in characteristics ranging from industry and occupation to educational attainment and family size.

- Most important, metropolitan form and function were invariably linked; that is, metropolitan territory that was linked socially and economically necessarily had visible landscape characteristics and was typified by high relative population density.

Five decades of urban, suburban, and exurban growth may have subsequently altered the meaning of "metropolitan character." Since 1949, additional measures of metropolitan character—rapid population growth, percentage of urban population, and presence of UA population—have been added to the standards to measure other important attributes. Up-to-date MA standards should continue to reflect the evolving nature of settlement patterns and demographic characteristics in the United States. Change in this aspect of the standards is not new: for example, the 1980 MA standards eliminated a metropolitan character criterion pertaining to non-agricultural workers; the steep drop in agricultural employment nationwide had made such a criterion irrelevant.

Enormous variation in population density still exists in the United States, from the densely populated sections of

some older cities to the sparsely settled areas of the interior West. An increasing share of the Nation's population, however, resides in a built environment that is of neither extremely high nor extremely low density. The percentage of the population living in rural areas has declined from approximately 29 to 24 since 1950, and the percentage of the population living in central cities of metropolitan areas has declined from 33 to 31 despite increases in the number of central cities. In contrast, the percentage of the Nation's population living within MAs but outside central cities has doubled, from 23 to 46. The Nation's population steadily has been moving away from landscapes of population density extremes, both high and low.

Population growth in nonmetropolitan America is occurring predominantly in the smaller cities and towns, particularly in areas adjacent to or near MAs. One consequence of this growth of intermediate density areas is a blurring of many of the sharp differences in population density that once existed between urban and rural areas or between metropolitan and nonmetropolitan areas.

Improvements in communications technology and transportation infrastructure also have blunted the differences between high-density and low-density areas. In the past, telephones, well-paved roads, and railroads connected rural areas with their urban markets, but the friction of distance was much higher than today; ideas and cultural attitudes traveled according to weekly, monthly, and seasonal rhythms.

In 1949, settlement form still was intertwined closely with function. Areas having high population densities also were those that were linked closely with urban centers. The 1949 SMA standards were written before the construction of interstate highways and could not have anticipated the changes in commuting and settlement patterns brought about by high-speed highways. These highways improved access to rural, low density areas that previously were beyond the scope of most urban influences and daily commuting. With less expensive long distance telephone service, interstate highways providing quick and easy access to cities and towns, satellite uplinks and commercial television broadcasting nationally, and the Internet, population density is a less significant variable. Population density no longer correlates with differences in industry, occupation, family structure, and other variables to the extent that it did 30 to 50 years ago. It is more difficult to argue that sparsely settled areas must meet different criteria of

integration with central cores than areas with higher population densities. Consequently, population density has become less relevant as a direct measure of ways in which communities are linked socially and economically.

C. Central Cores

1. Introduction

Cores of metropolitan regions continue to be vital centers of activity even as the decentralization of many economic and social functions continues. Central business districts contain significant clusters of government facilities; corporate headquarters; finance, insurance, and real estate firms; entertainment complexes; and services that cater to these facilities. Many establishments located in suburban areas provide services to central city clients and depend heavily upon them. While the core has changed over time, it remains a key component of metropolitan regions.

The MA standards always have explicitly incorporated central cores as one of the major components in the definition of individual areas (see Table 1). Two kinds of changes in central core requirements are under consideration—changing minimum population requirements and changing criteria for the definition of cores.

2. Changing Minimum Population Requirements

One option under review would raise the minimum population level for the definition of MA cores from 50,000 to 100,000. Doubling the current threshold would take into account the significant increase (over 100 percent) in the Nation's population since 1930 (the first year in which the 50,000 person minimum was used in identifying cores of metropolitan districts) and the consequent relative decrease in the significance of a core of 50,000 population. The new threshold would facilitate greater comparability with another major statistical data set, the public use microdata samples (PUMS) from the decennial census, which are used extensively by researchers examining metropolitan and nonmetropolitan issues (Fotheringham and Pellegrini 1996).

Along with an increase in minimum population size for MA cores, the classification would be expanded to address smaller cores as well. By including provision for one or two additional sets of areas, the new standards could better account for gradations in population focused around urban centers of varying size

throughout the United States. If MA cores were to have a minimum of 100,000 persons, then other sets of areas could be defined using cores of (1) at least 10,000 persons and less than 50,000 persons, and (2) at least 50,000 persons and less than 100,000 persons. Identifying coherent nonmetropolitan areas based around smaller population centers provides a potential improvement for analysts and researchers who are dissatisfied with a system that leaves nonmetropolitan areas largely undifferentiated.

3. New Criteria for Defining Cores

In addition to using places and Census Bureau-defined UAs based on population and population density to define metropolitan or nonmetropolitan cores, at least four other criteria could be used. One alternative would be to use housing unit density as the primary defining characteristic. A second alternative would be to combine two characteristics, population and employment. This would involve calculating ratios that compare the number of individuals employed in a geographic area to the number of residents in the same area. The explicit use of such an employment measurement in the definition of a core would be a logical extension of the use of another employment-related statistic, commuting patterns, to define those areas that are integrated with the core. A third option would be to rely solely on employment as the defining characteristic by delineating cores on the basis of employment density, defined as the number of jobs per unit of area.

A fourth alternative would use commuting data directly to identify cores as those areas that exhibit strong evidence of multi-directional commuting. In this approach, multi-directional commuting indicates interdependence within the core of an urban area and could be used to define inner city and inner suburban territory. Outlying territory integrated with a particular core would contain mostly uni-directional commuting flows toward that core and could be used to define outer suburban territory.

These different approaches to defining cores of metropolitan and nonmetropolitan areas reflect changes in settlement and commuting trends, as well as technological improvements in geographic analysis; yet, they remain consistent with the tradition of identifying the Nation's large urban centers.

D. Geographic Building Blocks for Metropolitan Areas and Nonmetropolitan Areas

1. Introduction

This section addresses the relative merits of various potential geographic building blocks. The geographic unit used to define metropolitan and nonmetropolitan areas is important to data providers and users due to: (1) its effect on the geographic extent of a statistical area; (2) its meaningfulness in describing economic and social integration between communities; and (3) the ability of Federal agencies to provide data for comparable statistical areas and their components. The choice of whether to use counties or county subdivisions as building blocks for MAs was a central issue in the 1940s during development of the MA program; resolution of the issue at that time favored greater availability of data over greater geographic precision in defining social and economic linkages.

The concerns raised in the 1940s also are central issues in this review. Counties are familiar geographic units offering the advantage of a wider range of statistically reliable economic and

demographic data. Because of their geographic extent, however, counties can include territory and population not functionally integrated with a specific core. Sub-county entities offer greater resolution when analyzing economic and demographic patterns, and increased precision when defining statistical areas. These smaller units are at a disadvantage, however, because fewer economic and demographic data series are available for sub-county entities than for counties, and there would be less comparability of units defined on this basis with previously defined metropolitan and nonmetropolitan areas.

2. Characteristics of the Metropolitan and Nonmetropolitan Area Building Blocks

The geographic entity used as a building block should have the following characteristics:

- *Consistency.* The geographic building block should be delineated in a consistent fashion across the Nation. The degree to which this is the case both within a state and from one state to another affects the ability to make

meaningful comparisons of demographic and economic data.

- *Data Availability and Utility.* Data for a geographic building block should be available from a wide variety of sources and should facilitate the linkage of various data sets.

- *Stability of Boundaries.* The ability of the geographic building block to be flexible in portraying demographic and economic change over time in areas is important when defining and analyzing social and economic linkages between communities.

- *Familiarity.* The geographic unit used to define metropolitan and nonmetropolitan areas should be meaningful and recognizable to a wide range of data users.

Table 2 details the advantages and disadvantages of using each of five geographic units (counties, county subdivisions, census tracts, ZIP Codes, and grid cells) as building blocks in relation to the characteristics outlined above. The following paragraphs summarize the significant issues from Table 2 and discuss related issues of confidentiality and data reliability.

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Table 2
Evaluation of Five Geographic Building Blocks

GEOGRAPHIC ENTITY	Consistency Across Entity	Stability of Boundaries	Portraying Change Over Time and Space	Data Availability	Familiarity
County	<p>Each state establishes rules to define counties</p> <p>County size varies within a state, and from state to state</p>	<p>Boundaries rarely change; thus are useful for showing change of characteristics (population, economic factors, etc.) over stable areas.</p>	<p>Counties are stable, so are useful for showing general change in characteristics over time, but are too large for local-scale analysis.</p>	<p>Much data from many sources already are available at county level of aggregation.</p> <p>Few problems of confidentiality or statistical reliability exist.</p>	<p>Counties are familiar, easily identified (often shown on maps) and well-known.</p>
<p>County Subdivision: Minor Civil Division (MCD) together with Census County Division (CCD)</p>	<p>MCDs (in 28 states and DC) are legal units established by state rules. Some are governmental units, some are administrative (e.g., election districts). CCDs (in 22 states) are areas created for statistical purposes by local officials according to Census Bureau guidelines</p> <p>Land-area shape and size vary within a state and from state to state</p>	<p>MCD stability varies from state to state according to state law and annexation practices. Some MCDs are highly stable (e.g. in the Northeast) while some change annually with local annexations (e.g., in Ohio). CCDs generally are stable, although some changes have occurred since first established starting in 1950.</p>	<p>Because some MCDs and CCDs are unstable, MCDs and CCDs together are less useful than counties in showing change over time within a specific geographic area.</p>	<p>Most data are collected for MCDs with functioning governments; lesser amounts of data are collected for administrative MCDs and CCDs.</p> <p>MCDs and CCDs provide complete coverage of US area, but are of varying population size; smaller population in an entity means increasing issues of confidentiality and reliability.</p>	<p>MCDs with functioning governments are locally well-known, but to users outside the local area are less well-known. MCDs that are administrative units are less familiar. CCDs were created to structure statistical data, so are the least known of county subdivisions.</p>

Table 2 (cont.)
Evaluation of Five Geographic Building Blocks

GEOGRAPHIC ENTITY	Consistency Across Entity	Stability of Boundaries	Portraying Change Over Time and Space	Data Availability	Familiarity
Census Tract	<p>Local officials define census tracts according to Census Bureau criteria and guidelines.</p> <p>-----</p> <p>Census tracts have consistent population size; shape and land area varies with population density.</p>	<p>Boundaries generally are stable. Census tracts are designed to be relatively homogeneous with respect to population characteristics when first defined. When population grows, a tract may be divided but parts usually aggregate to original tract boundaries. Boundaries may change, in part reflecting changes in features used as boundaries.</p>	<p>The tract itself reflects change. As population density increases, tracts split (tract area becomes smaller).</p>	<p>Most demographic data are produced (or able to be produced) at census-tract level of aggregation. Small-area data increasingly are sought for analysis of demographic and economic characteristics and other issues such as home ownership.</p> <p>-----</p> <p>Tracts are designed with sufficient population size to assure confidentiality and statistical reliability of demographic data.</p>	<p>Census tracts are created to structure statistical data, so are not well known. Census tracts, however, may correspond to familiar local geography such as neighborhood or community.</p>
ZIP Code	<p>Established by USPS, ZIP Codes specify mail delivery routes and/or location rather than an area.</p> <p>-----</p> <p>ZIP Code of mail delivery point may be different than location of physical address.</p>	<p>ZIP Codes are the most unstable of the geographic entities. ZIP Codes can be taken out of use in one place and reused in another, giving false sense of comparability.</p>	<p>The ZIP Code itself reflects change. Routes are redrawn based on population growth and decline and on volume of mail to deliver.</p>	<p>ZIP Codes are used increasingly for data tabulation by public and private sector (for consumer behavior and neighborhood profiles) but ZIP Code users must approximate areal boundaries themselves.</p>	<p>Everyone in the United States uses ZIP Codes, so most users recognize the concept.</p>
Grid Cell	<p>Grid cells are not yet established as consistently defined areas.</p> <p>-----</p> <p>Each cell would encompass the same amount of area.</p>	<p>Once established, grid cells would not change over time thus would be useful to show change of characteristics over stable areas.</p>	<p>Grid cells could be designed to meet needs for analyzing change both within and across space.</p>	<p>All data collectors would need to convert from their current areal units to the standard grid cells.</p> <p>-----</p> <p>Selection of grid cell size would require consideration of confidentiality and reliability.</p>	<p>Grid cells are artificially constructed, while they facilitate control from an analyst's point-of-view, they are artificial areas compared to familiar units such as counties (or census tracts that correspond to neighborhood or community).</p>

Counties. Except in New England, counties currently are used to define MAs. Counties are well-known, with boundaries that rarely change, and they are useful for analyzing data over time. Data currently are available for counties from a wide variety of Federal, state, and local agencies and less frequently are limited by disclosure and statistical reliability issues than sub-county units. Counties, however, are established according to state laws and have as their primary purpose the administration of local government and provision of programs and services. As a result, there is little consistency in population size and land area among counties throughout the United States. The large size of counties in the West often poses challenges to measuring and analyzing localized shifts in population.

County Subdivisions. County subdivisions currently are used to define MAs in New England, and before 1950 were used to define metropolitan districts. County subdivisions include MCDs, such as towns and townships, and census county divisions (CCDs). MCDs are governmental or administrative entities defined according to state laws. CCDs are defined for statistical purposes by local officials using nationally consistent criteria and guidelines issued by the Census Bureau. As with counties, the population sizes and land areas of county subdivisions vary both within state and from one state to another. Governmentally functioning MCDs in the Northeast as well as most CCDs generally have stable boundaries; elsewhere, MCD boundaries may change because of annexations or mergers. Redistricting of administrative MCDs, particularly in Virginia and North Carolina, can result in substantial changes each decade. Accounting for these changes could require significant retabulations of data for metropolitan and nonmetropolitan areas, potentially compromising comparability of data over time. The volume of economic and demographic data collected and published for county subdivisions varies, with greater amounts available for MCDs with functioning governments and lesser amounts for MCDs without functioning governments and CCDs. Despite variations in population size and instability of boundaries for some MCDs and CCDs, county subdivisions could provide a compromise between the disadvantages posed by the geographic extent of counties and the more limited availability of economic data for some other sub-county geographic units.

Census Tracts. Local officials define census tracts using nationally consistent

criteria and guidelines established by the Census Bureau. Census tracts have a consistent population size range (between 1,500 and 8,000, with an optimum of 4,000) to ensure statistical reliability of data. Census tracts vary in size and shape and tend to reflect contemporary local settlement patterns. Census tracts are meant to facilitate analysis of time-series data at a sub-county level, and are generally stable. Because they are defined in terms of population count, however, census tracts are capable of portraying change over time by changing boundaries. If a tract increases in population, it can be split to form new census tracts that aggregate to the original boundaries. For the 1990 decennial census, approximately 30 percent of all census tracts had boundary changes. Although demographic data generally are available for census tracts, a key disadvantage is the dearth of economic data available at the census tract level. Data for census tracts, however, are becoming increasingly important for understanding and analyzing patterns of home ownership and economic development, as well as the general social and physical environment within metropolitan and nonmetropolitan areas.

ZIP Codes. The U.S. Postal Service (USPS) establishes ZIP Codes to facilitate efficient mail delivery. ZIP Codes are linear rather than areal (i.e., they are routes that mail carriers walk or drive) and as a result do not have discrete boundaries. In some instances, when the volume of mail is particularly high, a ZIP Code may refer to a specific building, a floor within a building, or even a specific office. Because ZIP Codes exist for operational purposes, they can be taken out of use when the population of an area declines or when the USPS consolidates post offices. The USPS, however, sometimes reuses such ZIP Codes in a different location, thus creating a false sense of comparability if used as geographic areas. Despite their shortcomings as geographic units, ZIP Code use is, nevertheless, ubiquitous for collecting and reporting information on demographic and economic characteristics as well as for carrying out surveys and market analysis studies that report on consumption patterns and lifestyle characteristics.

Grid Cells. Grid cells are not in use currently by Federal statistical agencies. If established, however, they could provide ideal units for analyzing population change within stable boundaries. If relatively small in geographic extent, they also could be useful in measuring population change across space. Grid cells would be

defined consistently nationwide and all would encompass a similar amount of territory. Although grid cells may offer advantages from delineation, measurement, and analysis standpoints, their lack of familiarity and relationship with geographic areas that are more real and familiar to people offer significant disadvantages to their use. In addition, adoption of grid cells would require data providers to convert from use of current geographic entities. Selection of grid cell size would require careful consideration of confidentiality and statistical reliability concerns.

3. Quality and Availability of Data

In general, the quality of data for particular areas is related to the allocation of questionnaire responses to specific geographic entities and to the statistical reliability of the data derived from a sample. The geographic precision of data is only as good as the completeness of location information provided in the response, and the quality of geographic codes assigned to it. This limitation affects the ability to report data at varying levels of geography.

Respondent confidentiality also must be considered when determining which geographic area to use as a building block, particularly if data are to be reported for components of metropolitan and nonmetropolitan areas. In general, the larger the number of observations (persons, households, establishments within a specific industry) within a geographic entity, the greater the ability to protect respondent confidentiality.

Not all Federal data can be provided for every level of geography, and the frequency with which Federal data are available also can vary by level of geography. Sample size limitations for some demographic survey data make survey results reliable only at higher levels of geography. The diffuse nature of modern manufacturing processes renders some economic data, for instance the amount of value added to a product at each step in the manufacturing process, difficult to portray at levels of geography below the state or Nation. Data that are available only from the decennial census place limitations on the frequency of updating some statistical areas. The uncertain availability of intercensal population estimates for census tracts, and the likelihood that tract-level commuting data from the American Community Survey will not be available for all census tracts until 2008, also will affect the ability to update metropolitan and nonmetropolitan areas.

4. Summary

The choice of a building block should focus on achieving the most precise geographic delineation of metropolitan and nonmetropolitan areas possible, given the constraints of data availability. Collecting, processing, and tabulating data at sub-county levels of geography are important technical issues that must be resolved within individual Federal statistical agencies if a sub-county geographic unit is to be used to define metropolitan and nonmetropolitan areas.

Counties and census tracts offer the greatest promise as potential building blocks for metropolitan and nonmetropolitan areas based on current availability and reliability of statistical data, general stability of boundaries over time, consistency of definitions, and

familiarity among data users. Counties and census tracts, therefore, are used in the examples of alternative methods for defining metropolitan and nonmetropolitan areas that follow in Part IV.

Part IV. Alternative Approaches to Defining Metropolitan and Nonmetropolitan Areas

This part presents four alternative approaches to defining metropolitan and nonmetropolitan areas: (1) a commuting-based, county-level approach; (2) a commuting-based, census tract-level approach; (3) a directional commuting, census tract-level approach; and (4) a comparative population density, county-level approach. Table 3 summarizes how each

approach addresses issues raised in Parts I and II of this Notice.

All four of these approaches differ from the current (1990) MA standards in many respects but have points in common with them as well. The first three approaches share with the current standards a reliance on commuting patterns, but depart from the standards' other criteria for inclusion of outlying areas in an MA. None of these three approaches uses population density, presence of urban population, or rapid population growth to evaluate outlying areas. The fourth approach uses population density as an indicator of the relative intensity of social and economic activity rather than attempting to identify individual cores or to quantify core-outlying area relationships.

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TABLE 3
Issues and Approaches

Issues						
Approach	Areas Identified at Metropolitan/ Nonmetropolitan Level	Components of Settlement are Familiar	National, Exhaustive Coverage	Simplified, Nationally Consistent Standards	Criteria for Linking Outlying Areas with Cores	Update Frequency
Commuting-Based County-Level Approach	Delineation rules are explicit.	Central cores identified on basis of UAs and incorporated places. Counties used to define areas.	Exhaustive, four-tier system	Population criteria for cores; consistent commuting criterion used to assign all outlying areas to the three-tier statistical areas nationwide	Commuting	Reclassification of areas based on population of core dependent on special census or availability of population estimates. American Community Survey (ACS) commuting data for updating extent of areas to be available annually for all counties starting in 2003.
Commuting-Based Tract-Level Approach	Delineation rules are explicit in stage two.	Central cores identified on basis of UAs and incorporated places. Census tracts used to define areas.	Exhaustive. Three-tier system with some overlapping areas in stage one. Five-tier system with mutually exclusive areas in stage two	Population criteria for cores; commuting criteria used to assign all outlying areas to statistical areas nationwide	Commuting measured at two levels	Reclassifying and updating extent of areas dependent on availability of population estimates for census tracts. ACS commuting data for all census tracts to be available annually starting in 2008.
Directional Commuting Tract-Level Approach	Delineation rules are explicit.	UAs and incorporated places used to identify internal points. Census tracts used to define areas.	Exhaustive four-tier system	Statistical formula used to derive weighted commuting flows	Commuting	Reclassifying and updating extent of areas dependent on availability of population estimates for census tracts. ACS commuting data for all census tracts to be available annually starting in 2008.
Comparative Density County-Level Approach	No MAs are identified; user could aggregate counties.	Counties used to define areas.	Exhaustive. All counties are classified uniquely according to population density.	Population density is calculated easily. Counties are ranked nationally and within state.	None	Updating possible annually using county population estimates

Although these approaches use either counties or census tracts as the building blocks for statistical areas, each could be implemented using other geographic units discussed in Part III.D. The population and commuting thresholds presented for these approaches were selected by analyzing 1990 population and commuting patterns but are intended primarily for illustrative purposes and are subject to modification based on further research and on comments received in response to this Notice. In general, each approach should be read, considered, and commented upon in terms of its adequacy in defining and describing social and economic ties among communities throughout the United States.

A. A Commuting-Based, County-Level Approach to Defining Metropolitan and Nonmetropolitan Areas

The MA has been successful as a standard statistical representation of the social and economic linkages between urban centers and outlying areas. This success is evident in MAs' continued use across broad areas of data collection, presentation, and analysis. Nevertheless, some users of metropolitan and nonmetropolitan area data have strongly expressed the view that the current standards are overly

complex and burdened with *ad hoc* components. This first proposed alternative approach explicitly aims to provide a simpler method of defining metropolitan and nonmetropolitan regions.

Four kinds of areas are identified in this approach: metropolitan regions, defined around cores of at least 100,000 persons; mesopolitan regions, defined around cores of at least 50,000 persons and less than 100,000 persons; and micropolitan regions, defined around cores of at least 10,000 persons and less than 50,000 persons. Counties not included in a metropolitan, mesopolitan, or micropolitan region will constitute rural community areas.

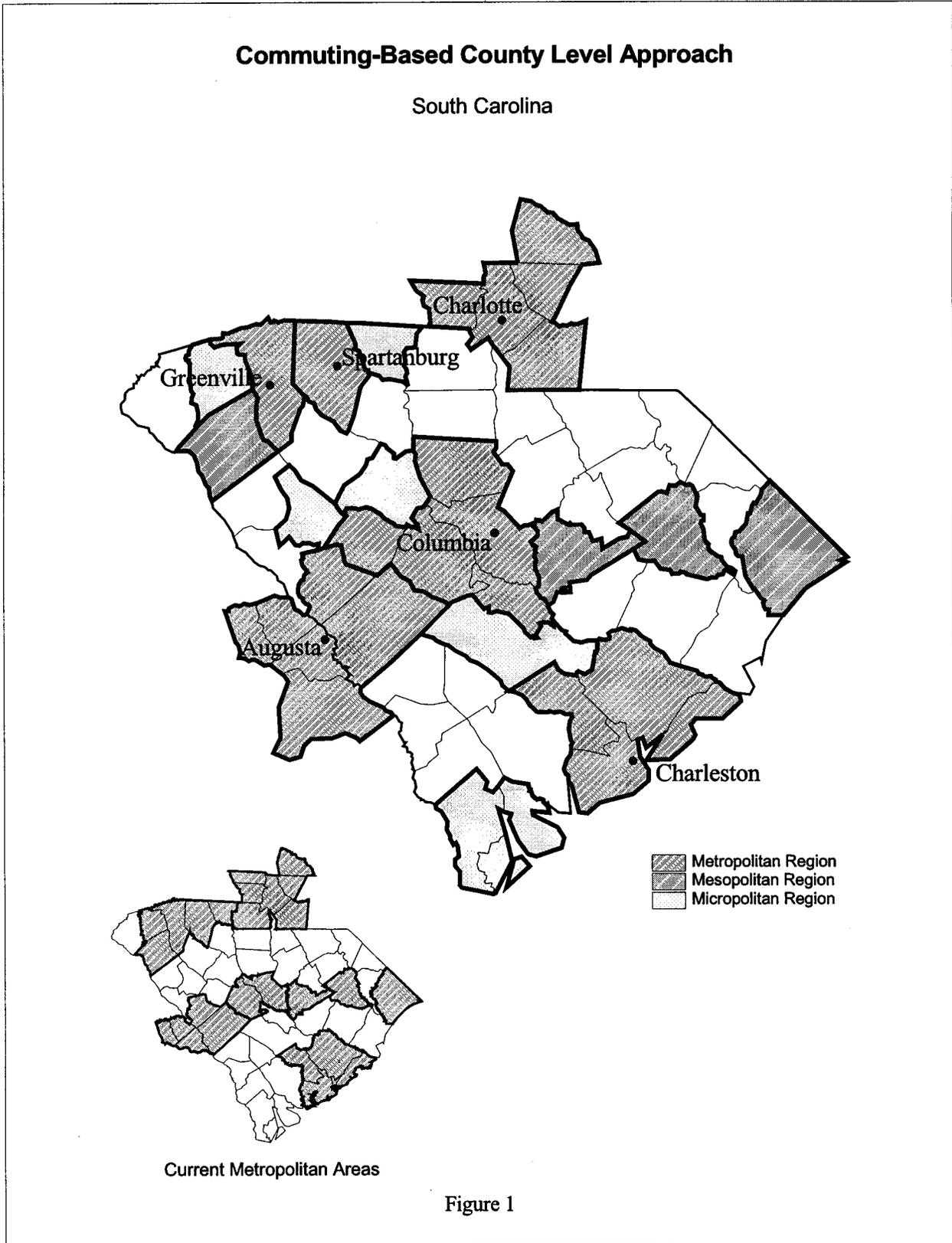
In this approach, counties are the building blocks (see Figure 1). While this is in keeping with the current standards for most of the United States, it is a departure from current practice in New England. Outlying counties are included in metropolitan, mesopolitan, and micropolitan regions solely on the basis of commuting. Adjacent areas are combined when commuting rates indicate that the central counties are linked socially and economically. When metropolitan regions are combined, the initial metropolitan regions are recognized as primary metropolitan regions and the combined entity is

recognized as a consolidated metropolitan region.

There are several advantages to this approach. First, counties are familiar geographic units for which a wide range of statistically reliable social and economic data are readily available. Second, the use of counties eases comparison with current and past MA definitions. Third, because of the greater availability of data for counties than for sub-county entities, statistical area definitions using counties can be updated more frequently than others. The potential availability of nationwide annual county-level commuting data from the Census Bureau's American Community Survey starting in 2003 raises the possibility of reviewing all definitions on an annual basis. Under the current standards, definition activity during intercensal years is largely limited to cases where new MAs can be designated on the basis of population estimates or special censuses.

There are, however, disadvantages to this approach as well. Because of their geographic extent, counties can include territory and population not functionally integrated with a specific core. The large geographic size of some counties often poses challenges to measuring and analyzing localized shifts in populations.

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1. Criteria for Defining Metropolitan Regions Using the Commuting-Based, County-Level Approach

a. Requirement for Qualification as a Metropolitan Region

Each metropolitan region must include a Census Bureau-defined UA of at least 100,000 persons.

b. Identification of Central Counties of a Metropolitan Region

The central county or counties of the metropolitan region are those counties where at least 50 percent of the population resides in the qualifier UA(s), or that contain at least 50 percent of the population of the qualifier UA(s). A central county of one metropolitan region cannot be included as an outlying county in another metropolitan region in the initial steps for defining metropolitan regions (see IV.A.1.d below).

c. Inclusion of Outlying Counties

A county is included in the metropolitan region as an outlying county if at least 25 percent of its resident workers commute to the central county or counties, or at least 15 percent of its resident workers commute to the central county or counties and at least 15 percent of its employment is accounted for by workers residing in the central county or counties.

A county that qualifies as an outlying county of more than one metropolitan region will be included in the metropolitan region with which it has the highest commuting exchange. A county that has a combined commuting exchange with central counties of two or more metropolitan regions that meets or exceeds the thresholds listed above, and is contiguous with counties already qualified for inclusion in those metropolitan regions, will be included in the metropolitan region with which it has the highest commuting exchange.

The counties included in the metropolitan region must form a continuous geographic entity. A central county of one metropolitan region cannot be classified as an outlying county of another metropolitan region at this stage in the definition process.

d. Combination of Adjacent Metropolitan Regions

Two adjacent metropolitan regions are combined if a central county of one metropolitan region qualifies as an outlying county of the other. If two or more metropolitan regions are combined, the metropolitan regions as

defined before the combination will be designated as primary metropolitan regions and the area resulting from the combination will be designated as a consolidated metropolitan region.

e. Titles of Metropolitan Regions

The first name in the title of a metropolitan region or primary metropolitan region will be the name of the incorporated place with the largest population in the metropolitan region. The names of up to two additional incorporated places that are at least one-third the size of the largest incorporated place will be included in the metropolitan region or primary metropolitan region title in order of descending population rank.

The title of a consolidated metropolitan region will include the names of up to three incorporated places, including the first named incorporated places in the titles of component primary metropolitan regions (to a maximum of three) in order of descending population rank of incorporated places.

2. Criteria for Defining Mesopolitan Regions and Micropolitan Regions

The criteria for defining mesopolitan regions and micropolitan regions are the same as those for defining metropolitan regions, with two exceptions: the requirements for qualification and the criteria pertaining to combining mesopolitan and micropolitan regions. For the sake of brevity, only the requirements for qualification and criteria for combining adjacent mesopolitan regions and micropolitan regions are presented here.

a. Requirements for Qualification of Mesopolitan Regions and Micropolitan Regions

Each mesopolitan region must contain no part of a metropolitan region and must include a Census Bureau-defined UA or, outside of UAs, an incorporated place of at least 50,000 persons and less than 100,000 persons. Each micropolitan area must contain no part of a metropolitan or mesopolitan region and must include an incorporated place of at least 10,000 persons and less than 50,000 persons.

b. Combining Adjacent Mesopolitan Regions and Micropolitan Regions

Two adjacent mesopolitan regions (or two adjacent micropolitan regions) are combined if a central county of one mesopolitan region (or one micropolitan

region) qualifies as an outlying county of the other.

3. Identification of Rural Community Areas

Counties not included in a metropolitan, mesopolitan, or micropolitan region will form the components of rural community areas. Contiguous counties will be grouped according to local opinion to form individual rural community areas within each state, subject to specified conditions. Titles for rural community areas will be based on the same criteria used to title metropolitan, mesopolitan, and micropolitan regions.

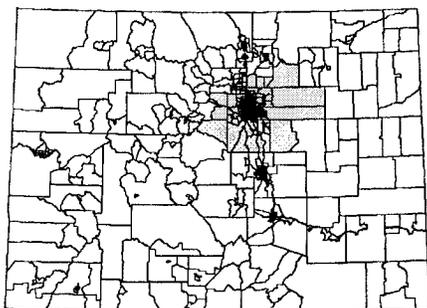
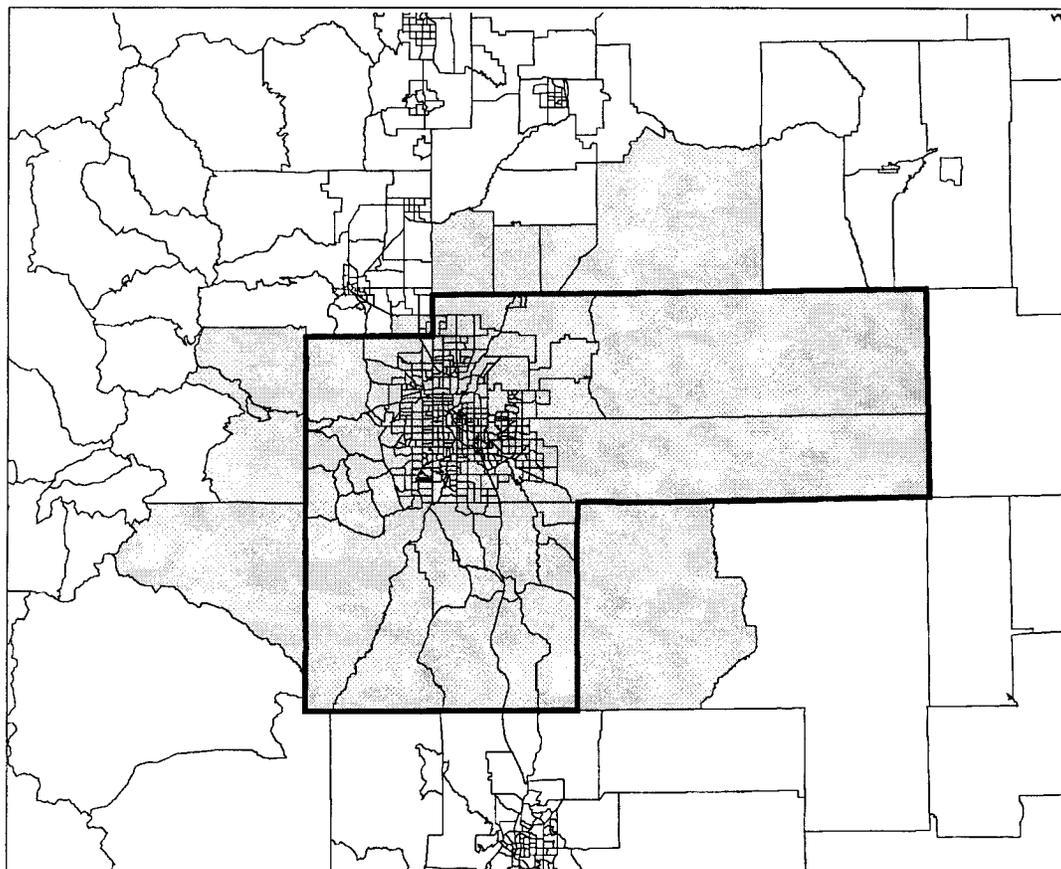
B. A Commuting-Based, Census Tract-Level Approach to Defining Metropolitan and Nonmetropolitan Areas

This second approach employs a two-stage process. First, it identifies statistical settlement areas based around cores of at least 10,000 persons and their associated daily influence areas. Second, it identifies metropolitan, mesopolitan, and micropolitan regions. Census tracts are the geographic units used in this approach. In the first stage, each statistical settlement area core is identified and linked with all qualifying statistical settlement area outlying census tracts on the basis of commuting, creating a system of overlapping areas. Any core or outlying census tract may be part of two or more statistical settlement areas. This outcome is meant to depict the overlapping and nested nature of social and economic linkages between communities throughout the United States. To account for all the territory of the United States, rural community areas are identified representing census tracts not contained within statistical settlement areas or their daily influence areas.

The second stage of this approach results in a non-overlapping classification, where each statistical area is mutually exclusive of all other statistical areas (see Figure 2). Criteria are employed to assign each census tract to only one metropolitan, mesopolitan, or micropolitan region. Census tracts not included in any of these areas are designated as either urban-influenced or rural-influenced, depending on whether the tracts meet specified criteria relating to commuting ties with cores of metropolitan, mesopolitan, or micropolitan regions.

Commuting-Based Census-Tract Level Approach

Denver



-  Current Metropolitan Area
-  Metropolitan Region
-  Tract Boundary

Figure 2

There are several advantages to this approach. Identifying overlapping statistical areas in stage one of the delineation process depicts the multiple linkages among communities. Using census tracts as building blocks offers greater resolution when analyzing social and economic patterns and increased precision when defining statistical areas. Census tracts are defined nationwide using a consistent set of population guidelines; they are capable of portraying change over time and across space as their boundaries are updated to reflect population and settlement pattern changes.

There are disadvantages to this approach as well. First, the limited availability of economic and demographic data for census tracts at this time limits their use in analysis. Second, it is more difficult to compare areas defined using census tracts with MAs defined currently and in the past using counties. Third, the uncertain availability of intercensal population estimates for census tracts and the likelihood that tract-level commuting data from the Census Bureau's American Community Survey will not be available for all tracts until 2008 could result in a lack of data to update areas during much of the coming decade. As a result, metropolitan, mesopolitan, and micropolitan regions could be defined after the 2000 decennial census, but not updated until 2008 or later. Fourth, tract-level commuting data from the 2000 census may be less certain in some nonmetropolitan areas (where lists of commercial addresses are less complete and geocoding place-of-work locations therefore is more difficult) than in current MAs. These uncertainties in the quality of place-of-work geocoding may reduce the reliability of journey-to-work data for census tracts with small numbers of commuters.

1. Criteria to Establish Statistical Settlement Areas and Their Daily Influence Areas

a. Requirement for Qualification as a Statistical Settlement Area

Each statistical settlement area must include either a Census Bureau-defined UA or, outside of UAs, an incorporated place of at least 10,000 persons.

b. Identification of the Central Core of a Statistical Settlement Area

The core of a statistical settlement area consists of the census tract(s) in which 20 percent or more of the population falls within the UA or place identified in the previous step. In addition, at least 70 percent of the

workers living in the statistical settlement area core must work within the core. This last criterion ensures that places that are strictly "bedroom communities" are not identified as cores of statistical settlement areas.

c. Qualification of Outlying Areas

A census tract is included in a statistical settlement area as an outlying census tract if at least 25 percent of resident workers in that tract commute to work in the core, or if at least 25 percent of the employment in the census tract is accounted for by workers residing in the core.

d. Titles of Statistical Settlement Areas

The title of a statistical settlement area will include the name of the incorporated place with the largest population. The names of up to two additional incorporated places that are at least one-third the size of the largest place will be included in the statistical settlement area title in order of descending population rank.

e. Identification of Daily Influence Areas

A census tract is included in the daily influence area of a statistical settlement area if at least 5 percent but less than 25 percent of the resident workers in that tract commute to work in the core of the statistical settlement area, or if at least 5 percent but less than 25 percent of the employment in the census tract is accounted for by workers residing in the core of the statistical settlement area.

f. Identification of Rural Community Areas

Census tracts not included in any statistical settlement area or daily influence area will form the components of rural community areas. Contiguous census tracts will be grouped according to specified conditions. Titles for rural community areas will be based on the same criteria used to title statistical settlement areas.

2. Identification of Metropolitan Regions, Mesopolitan Regions, and Micropolitan Regions

Stage two in this approach provides criteria for identifying mutually exclusive metropolitan, mesopolitan, and micropolitan regions, and then classifies the remaining territory as urban-influenced or rural-influenced.

a. Assigning Territory in Individual Statistical Settlement Areas

A census tract that is part of the core of more than one statistical settlement area will be assigned to the statistical settlement area in which it has a larger population within the associated

qualifier UA. A census tract that is in the core of one statistical settlement area and outlying to one or more other statistical settlement areas will be included in the statistical settlement area in which it is part of the core.

A census tract that qualifies for inclusion as an outlying census tract in more than one statistical settlement area will be assigned to the statistical settlement area with which it has the highest level of commuting exchange.

At no time may a statistical settlement area contain discontinuous census tracts.

b. Combining Statistical Settlement Areas

Statistical settlement areas will be combined if the entire core of one is integrated with the entire core of the other according to the commuting thresholds contained in IV.B.1.c above.

c. Qualification of Outlying Census Tracts in Combined Statistical Settlement Areas

After two or more statistical settlement areas are combined, a census tract will qualify for inclusion as an outlying census tract in the combined area if its commuting exchange with the combined statistical settlement area core(s) meets the criteria outlined in IV.B.1.c above.

d. Distinguishing Between Metropolitan Regions, Mesopolitan Regions, and Micropolitan Regions

Any statistical settlement area that contains a Census Bureau-defined UA of at least 100,000 persons will be designated a metropolitan region. Any statistical settlement area not identified as a metropolitan region will be designated as a mesopolitan region if it contains a Census Bureau-defined UA of at least 50,000 persons and less than 100,000 persons, or if outside a UA, an incorporated place of at least 50,000 persons. Any statistical settlement area not identified as a metropolitan or mesopolitan region will be designated as a micropolitan region.

e. Titles of Metropolitan Regions, Mesopolitan Regions, and Micropolitan Regions

Each metropolitan, mesopolitan, or micropolitan region title will include the name of the incorporated place with the largest population. The names of up to two additional incorporated places that are at least one-third the size of the largest place will be included in the metropolitan, mesopolitan, or micropolitan region title in order of descending population rank.

f. Identification of Urban-Influenced and Rural-Influenced Census Tracts

After all metropolitan, mesopolitan, and micropolitan regions are defined, any unassigned census tract will be identified as urban-influenced if at least 5 percent but less than 25 percent of the resident workers in that tract commute to work in the core of a metropolitan, mesopolitan, or micropolitan region, or if at least 5 percent but less than 25 percent of the employment in the census tract is accounted for by workers residing in the core of a metropolitan,

mesopolitan, or micropolitan region. Any census tract that does not meet these commuting criteria will be classified as rural-influenced.

C. A Directional Commuting, Census Tract-Level Approach to Defining Metropolitan and Nonmetropolitan Areas

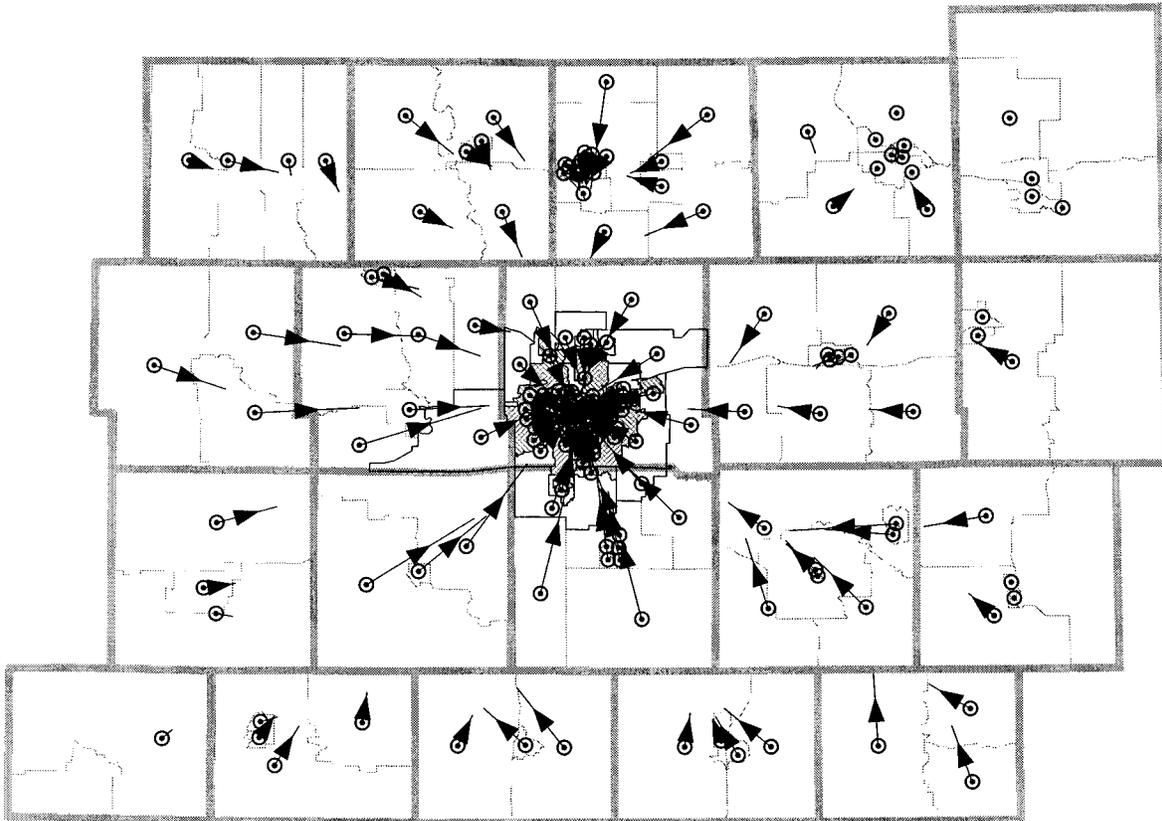
The directional commuting approach also is a census tract-based system. It relies on the direction and relative strength of commuting flows to measure social and economic linkages. This

concept can be visualized by imagining typical commuters driving toward a hypothetical center of metropolitan or nonmetropolitan population in the morning and away from it in the evening. This approach measures the mean weighted direction of all commuting flows from a particular tract toward a population center, rather than measuring the percentage of workers who commute between central cores and outlying areas (see Figure 3).

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Directional Commuting Census-Tract Level Approach

Des Moines Area



-  Urbanized Area
-  Tract Boundary
-  County Boundary

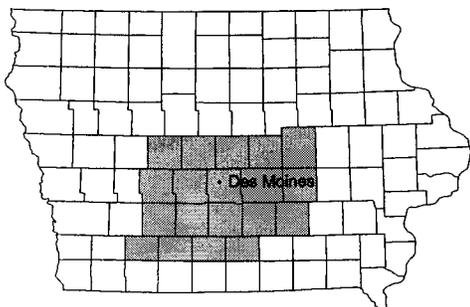


Figure 3

The spatial characteristics of commuting flows never have been explicitly incorporated into the MA standards, even though the links between residence and work are inherently spatial. New research using disaggregated commuting flow data can measure flow characteristics that have been observed by highway and transit planners for decades.

The directional approach uses the weighted mean direction of commuting flows by census tract to associate census tracts with population centers. If the weighted mean flow of a given census tract is in the direction of a nearby population center, then the tract is included within the same statistical area as that center.

The directional approach for creating areas has one major advantage. It can mitigate shortcomings with geocoding place-of-work data by generalizing commuting flow. Lack of sufficient place-of-work address information may make the geocoding of tract-level commuting data from the 2000 decennial census difficult in some nonmetropolitan areas where lists of commercial addresses are less complete than in current MAs. Uncertainties in the quality of place-of-work geocoding may reduce the reliability of sub-county journey-to-work data in the absence of techniques such as directional statistical methods.

Several disadvantages also are associated with this approach. The linkage of a census tract with a center of population is subject to a specified level of angular tolerance and is subject as well to limitations of the commuting data. Implementation of this approach at the census tract-level limits annual updating of all metropolitan, mesopolitan, and micropolitan region definitions using commuting data from the American Community Survey until at least 2008. Other disadvantages associated with this approach are similar to those outlined in the commuting-based, census tract-level approach discussed above.

1. Criteria for Defining Metropolitan Regions, Mesopolitan Regions, and Micropolitan Regions

a. Requirements for Qualification

Each metropolitan region must include a Census Bureau-defined UA of at least 100,000 persons. Each mesopolitan region must contain no part of a metropolitan region and must include either a Census Bureau-defined UA of at least 50,000 persons and less than 100,000 persons, or if outside a UA, an incorporated place of at least 50,000 persons. Each micropolitan

region must contain no part of a metropolitan or mesopolitan region and must contain an incorporated place of at least 10,000 persons and less than 50,000 persons.

b. Identification of Metropolitan Region, Mesopolitan Region, and Micropolitan Region Population Centers

Population centers are not cores *per se* but rather are starting points for the statistical analysis of commuting flows. The center point used in measuring directionality of commuting flows toward a metropolitan region is the "internal point" (see Part VII, "Frequently Used Terms") of the qualifier UA of 100,000 or more persons; in the case of mesopolitan regions, the center point used is the internal point of the qualifier UA of at least 50,000 and less than 100,000 persons, or, outside UAs, the internal point of the most populous incorporated place having at least 50,000 persons. The center point used in measuring directionality of commuting flows toward a micropolitan region is the internal point of the most populous incorporated place having at least 10,000 persons and less than 50,000 persons.

c. Calculation of Mean Weighted Direction of Commuting Flows

Statistical areas are delineated based on the weighted mean direction of commuting flows for census tracts with respect to population centers. A trigonometric formula is used to produce a weighted mean direction of flow for each tract of residence. Based on that value, a tract is assigned to the relevant nearby population center—the UA or place that lies directly in the path of the flow vector.

To associate census tracts' mean commuting flows with population centers, it is necessary to specify an angle of inclusion. This means determining a level of tolerance so that when a directional mean flow is toward a center of population but does not "hit" it directly, the flow is still associated with the center.

d. Qualification of Census Tracts for Inclusion in a Metropolitan Region, Mesopolitan Region, or Micropolitan Region

A census tract qualifies for inclusion in a metropolitan, mesopolitan, or micropolitan region if the largest flow of resident workers in the census tract is in the direction of the metropolitan, mesopolitan, or micropolitan region population center. If the flows are split evenly between two population centers,

then local opinion will be sought to determine the census tract's assignment.

Metropolitan, mesopolitan, and micropolitan regions may not contain discontinuous census tracts. Under this approach, it is possible that the mean weighted commuting flows from census tracts close to a population center may point in a direction away from the center and in an opposite direction of more remote tracts; in such instances, the central census tracts will be included in the metropolitan, mesopolitan, or micropolitan region.

2. Identification of Rural Community Areas

Census tracts not included in a metropolitan, mesopolitan, or micropolitan region will form the components of rural community areas. Contiguous census tracts will be grouped according to local opinion, subject to specified conditions, to form individual rural community areas within each state.

D. A Comparative Density, County-Level Approach to Defining Statistical Areas

The three approaches to defining metropolitan and nonmetropolitan areas just described rely upon commuting as the measure of linkages between central and outlying areas. Journey-to-work data, however, do not accurately depict the activity patterns of people without a regular, fixed work location, such as those who work in sales, contracting, construction and landscaping trades, and as day- and itinerant-laborers; also missed are people who work at home (or people not counted in the workforce). In addition, the daily journey to work does not describe the many other, non-work activities that define relationships between individuals and communities, such as trips associated with shopping, recreation, and social and religious activities.

Residential population density can serve as a surrogate for other measures of activity in the absence of nationally consistent and reliable data sets describing all daily and weekly movements of individuals. Under this fourth proposed approach, an index is calculated to reflect relative settlement intensities of counties. The index number assigned to any given county is determined by multiplying its population density ranking ratio at the state level with its ranking ratio at the national level (see below). This provides a relative measure of activity intensity for comparative purposes nationwide by taking into account both the national and state contexts. For instance, Natrona County, Wyoming, which constitutes the Casper Metropolitan Statistical Area,

has a low overall population density when compared with most other counties in the United States, but it would be assigned a value that also reflects its relative importance within Wyoming.

This approach has several advantages. First, because the classification is based solely on residential population density, each county's index value can be calculated quickly after 2000 decennial census population counts become available (and without waiting for the later processing of journey-to-work data). Thereafter, the classification could be updated annually using Census Bureau population estimates. Second, a wide range of statistically reliable social and economic data are readily available for counties. Third, the use of counties facilitates comparability with past MA definitions, even though this approach differs markedly from the current MA standards. Fourth, population density can provide information about the

intensity of activity or potential activity within a geographic area.

There are disadvantages to this approach as well. The obvious drawback is that social and economic linkages between counties are not described directly. Also, the large land area of some counties tends to lower overall population densities, and as a result, the index value for such a county would be relatively low in spite of relatively high population densities in some parts of the county (San Bernardino County, California provides a good example). Because population density is calculated by dividing total population by total land area, local, sub-county variations in population distribution patterns are not revealed.

1. Steps in Defining Density-Based Statistical Areas

a. The overall residential population density for each county is calculated by dividing total population by total land area.

b. All counties within a given state are ranked according to population density. The highest-density county is assigned the rank N, where N equals the number of counties in the state. The second-highest-density county is assigned the rank N-1; third-highest, N-2; and so forth. For example, if there are 100 counties in a state, then the county with the highest population density has a rank of 100; the county with the second highest population density is 99.

c. The state ranking ratio (SRR) of each county is calculated by dividing the rank of the county by the total number of counties in the state, using the following equation:

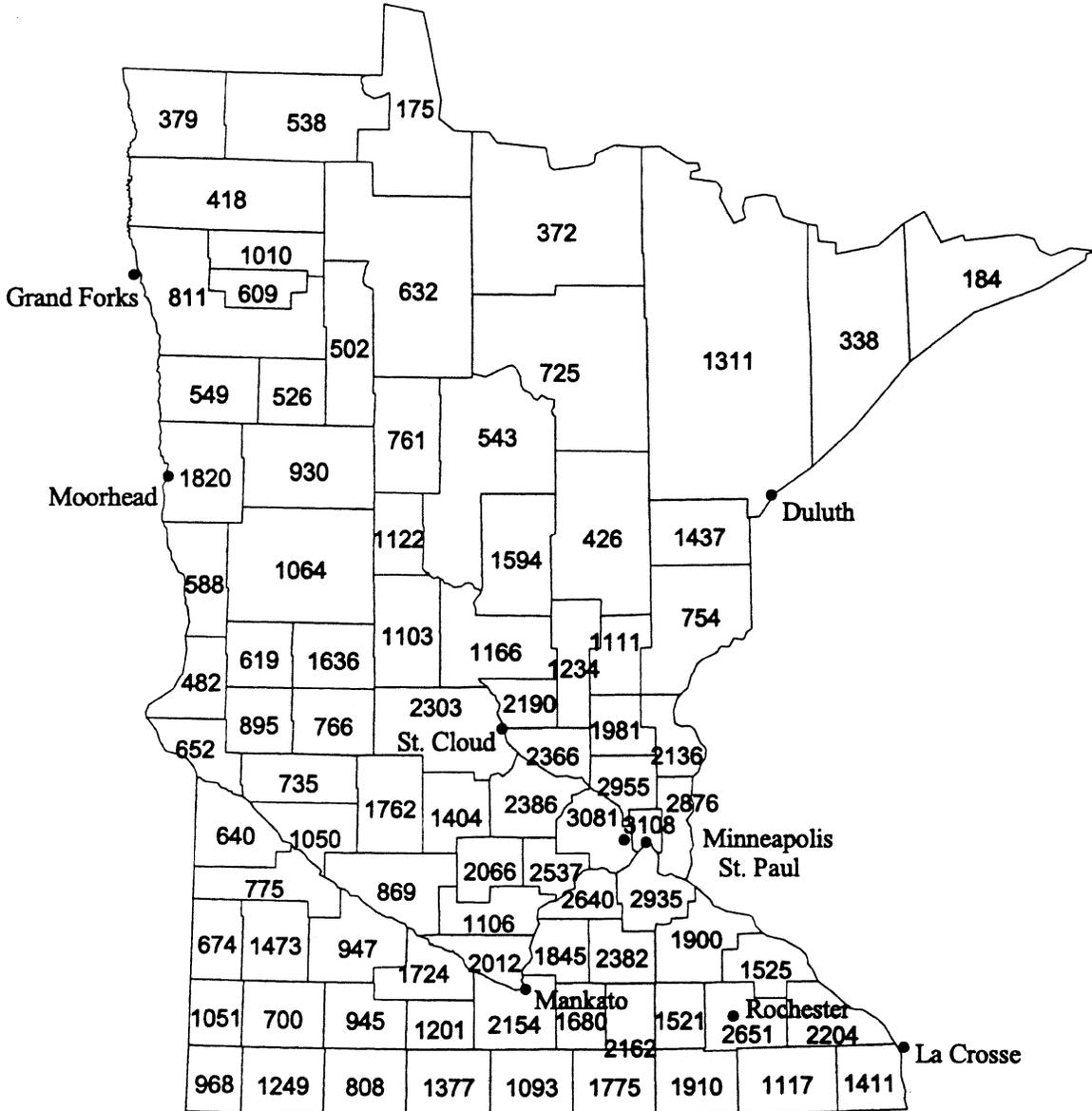
$$\text{SRR} = N [N-1, N-2, \dots] / N$$

d. After assigning each county a ranking ratio within the state, steps a, b, and c are repeated at the national level. In this iteration, N will represent the number of counties within the United States (see Figure 4a).

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Comparative Density County-Level Approach

Minnesota Counties, National Ranking



Representative Rankings (1990 data)

3141	New York County, NY	100th Percentile for US
2520	Nantucket County, MA	80th Percentile
1890	Santa Fe County, NM	60th Percentile
1265	Ward County, ND	40th Percentile
637	Natrona County, WY	20th Percentile
1	Yukon-Koyukuk Census Area, AK	First Percentile

Figure 4A

e. Each county is assigned an index number (I) by multiplying its state ranking ratio (SRR) and the national ranking ratio (NRR) using the following equation:

$$\text{SRR} \times \text{NRR} = \text{I}$$

This produces an index value that can be used to classify and compare counties throughout the United States in terms of population density, and thus relative social and economic importance (see Figure 4b).

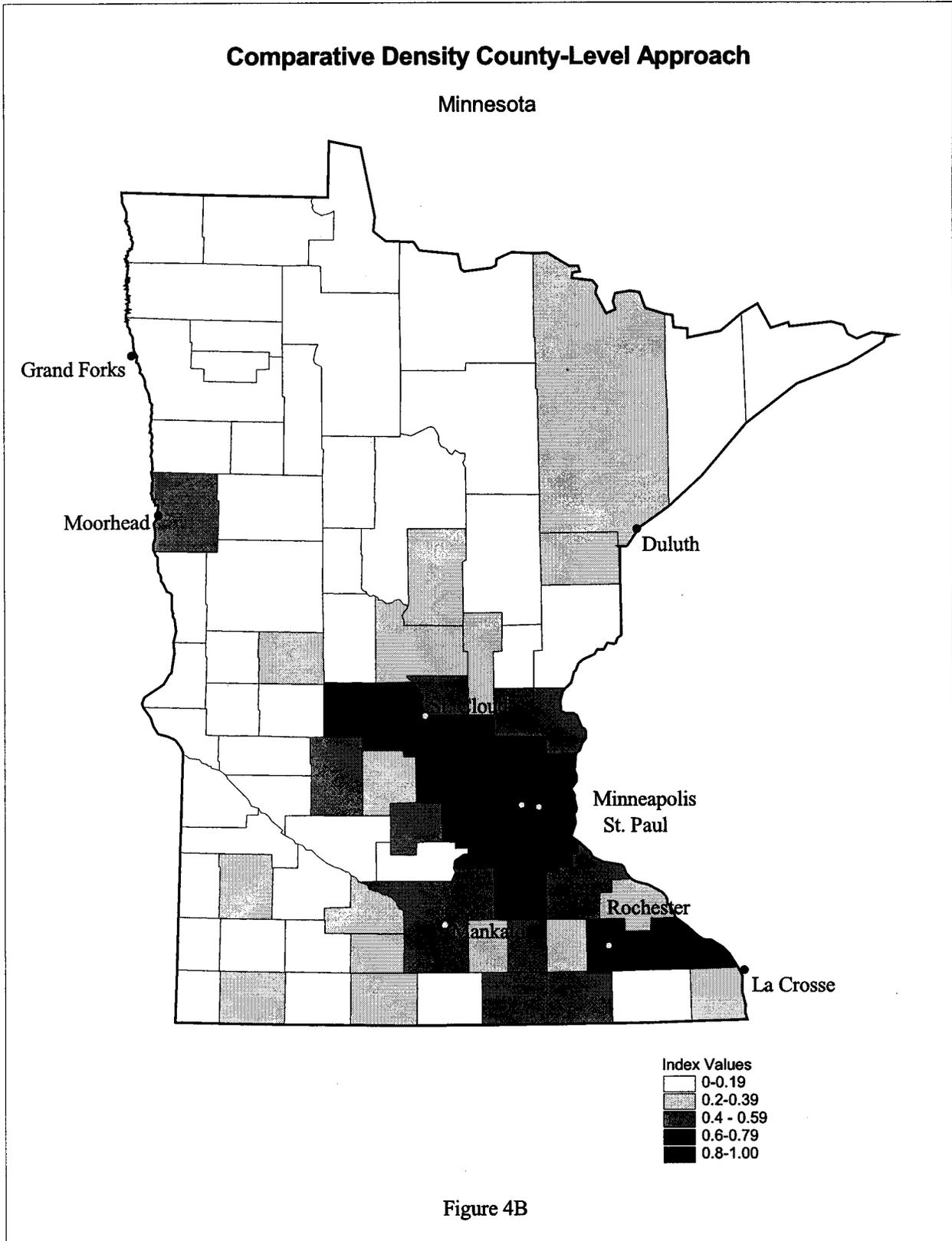
2. Identification of Residential Density-Based Statistical Areas

This approach would produce index values for all counties that can be used for classification into as many density-based levels as needed. A five-level classification that ranges between an index value of 0.0 to .19 at the low end and a value of .80 to 1.0 at the high end captures most recognizable aspects of the settlement pattern of the United States. Contiguous counties in the same classification level then can be identified as individual density-based statistical areas.

3. Titles of Density-Based Statistical Areas

The title of a density-based statistical area will include the name of the incorporated place with the largest population within that area. The names of up to two additional incorporated places that are at least one-third the size of the largest place will be included in the title in order of descending population rank.

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Part V. Additional Issues for Consideration

This portion of the Notice briefly discusses a few issues that were not fully addressed in Parts I through IV. These issues are: (1) how to account for residual areas or exhaust the territory of the Nation within a statistical area classification; (2) how best to meet data producers' and users' desires for both county-based and sub-county-based classifications; and (3) how to identify various settlement categories, such as inner city, suburban, exurban, and rural areas, in ways that are useful when analyzing and understanding settlement and economic patterns within metropolitan and nonmetropolitan areas.

A. Accounting for Residual Areas

Three of the four approaches presented in Part IV for defining metropolitan and nonmetropolitan areas relied on commuting patterns as a measure of linkages between outlying and central areas. In all three of these approaches, however, some residual territory could not be linked with the central areas. This section discusses methods for minimizing this residual territory when defining metropolitan and nonmetropolitan areas. These methods could be used individually or in combination.

One means of reducing residual territory is to establish a minimum commuting threshold low enough to ensure that all or nearly all territory is included within a metropolitan or nonmetropolitan area. Although this approach would result in areas that account for all the territory of the Nation, the necessary commuting threshold would be so low as to call into question the meaningfulness of social and economic linkages between centers and some outlying areas. As a result, the conceptual integrity of metropolitan and nonmetropolitan areas would be compromised.

A second method involves identifying cores of varying minimum sizes around which metropolitan and nonmetropolitan areas are defined using a commuting threshold that is sufficiently high to portray meaningful linkages. This approach does not eliminate the possibility that residual territory will remain, but reduces the extent of residual territory to a more meaningful set of areas. This approach is taken in Parts IV.A and IV.C.

A variant of this second approach reduces the extent of residual territory by defining influence zones associated with each metropolitan and nonmetropolitan area, as outlined in

Part IV.B. An outlying area that does not qualify for inclusion in a metropolitan or nonmetropolitan area could fall within the influence area of a metropolitan or nonmetropolitan area. Still, the extent of residual territory is reduced rather than eliminated.

A third approach involves using additional measures of social and economic linkages, such as newspaper circulation, media market penetration, and commodity flows, in addition to commuting criteria, to eliminate residual territory. These other measures would be used as a last resort after all outlying areas are added to a metropolitan or nonmetropolitan area on the basis of commuting. This approach eliminates residual areas by assigning all territory to metropolitan or nonmetropolitan areas but in doing so establishes a two-tiered system of qualification. As a result, outlying areas within a particular metropolitan or nonmetropolitan area may be linked with the core, but by different criteria.

B. Development of Multiple Sets of Statistical Areas

Some data users have expressed an interest in both a county-based classification, which offers greater availability of data, and sub-county-based classifications, which offer greater geographic precision when defining metropolitan and nonmetropolitan areas. Data providers and users could choose the classifications that best fit their research and analysis needs, guided by advice about appropriate uses of each classification. The substantial downside to this approach is the potential confusion resulting from the existence of two or more parallel classifications. Data providers also would be faced with increased costs for preparing data according to two or more classifications.

C. Settlement Types Within Metropolitan and Nonmetropolitan Areas

Data providers and users have expressed a desire for official classification of a variety of settlement types—such as inner city, inner and outer suburb, and exurban—within metropolitan and nonmetropolitan areas. A key aspect of this issue has been the lack of an official designation of what constitutes "suburban" territory. Designations of such settlement types are not essential to defining social and economic linkages among communities within metropolitan and nonmetropolitan areas, but they are useful for analyzing and understanding settlement patterns. A separate settlement classification

system that would be consistent with metropolitan and nonmetropolitan areas may be appropriate.

Measures that could be employed in delineating inner city, inner suburban, outer suburban, and exurban territory include, in some combination:

- median housing unit age or year of housing unit construction;
- commuting interchange with central core;
- directionality of commuting patterns;
- population or housing density; and
- road density.

High population density, older housing stock, multidirectional commuting, and contiguity with the inner city are typical of inner suburban areas, for example. Outer suburban areas are typified by moderate population density and age of housing stock and moderately unidirectional commuting flows. Exurban areas typically are of low population density, but are distinguished from other sparsely settled territory by newer housing and unidirectional commuting flows.

Part VI. Sources Cited

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Part VII. Frequently Used Terms

(An asterisk (*) denotes terms proposed for the purposes of this Notice)

Census county division (CCD)—A statistical subdivision of a county, established cooperatively by the Census Bureau and state and local government authorities, for the presentation of decennial census data in 21 states where minor civil divisions either do not exist or are unsatisfactory for the collection, presentation, and analysis of census statistics.

Census tract—A small, relatively permanent statistical subdivision of a county, delineated cooperatively by local statistical areas program participants and the Census Bureau. Census tracts for the 2000 decennial census will have between 1,500 and 8,000 inhabitants.

Central city—The largest city of a metropolitan statistical area or a consolidated metropolitan statistical area, plus additional cities that meet specified statistical criteria.

Central county—The county or counties of an MA containing the largest city or urbanized area, and to and from which commuting is measured to determine qualification of outlying counties.

Consolidated metropolitan statistical area (CMSA)—A geographic entity defined by OMB for statistical purposes. An area becomes a CMSA if it meets the requirements to qualify as a metropolitan statistical area, has a population of 1,000,000 or more, contains component parts that qualify as primary metropolitan statistical areas (PMSAs), and local opinion favors PMSA designation. Whole counties are components of CMSAs, except in New England, where they are composed of cities and towns.

County subdivision—A legal (minor civil division) or statistical (census county division) subdivision of a county.

* **Daily influence area (DIA)**—Territory that is minimally associated with a statistical settlement area.

Functional integration—The linkage of geographic entities according to patterns of social or economic interactions.

Geocoding—The practice of assigning data to a specific geographic location and a set of geographic codes.

* **Geographic building block**—The geographic unit, such as census tract, county subdivision, or county, that forms the basic geographic component of a metropolitan or nonmetropolitan area.

Internal point—A point, generally marking the central location within a geographic entity.

* **Mesopolitan region**—A geographic entity containing a core area of at least 50,000 persons and less than 100,000 persons plus adjacent communities having a high degree of social and economic integration with that core.

Metropolitan area (MA)—A collective term, established by OMB and used for the first time in 1990, to refer to metropolitan statistical areas, consolidated metropolitan statistical areas, and primary metropolitan statistical areas.

* **Metropolitan region**—A geographic entity containing a core area of at least 100,000 persons plus adjacent communities having a high degree of social and economic integration with that core.

Metropolitan statistical area (MSA)—A geographic entity, defined by OMB for statistical purposes, containing a core area with a large population center and adjacent communities having a high degree of social and economic integration with that center.

Qualification of an MSA requires the presence of a city with 50,000 or more inhabitants, or the presence of an urbanized area and a total population of at least 100,000 (75,000 in New England). MSAs are composed of entire counties, except in New England where the components are cities and towns.

* **Micropolitan region**—A geographic entity containing a core area of at least 10,000 persons and less than 50,000 persons plus adjacent communities having a high degree of social and economic integration with that core.

Minor civil division (MCD)—A type of governmental unit that is the primary legal subdivision of a county, created to govern or administer an area rather than a specific population. MCDs are recognized by the Census Bureau as the county subdivisions of 28 states and the District of Columbia.

New England county metropolitan area (NECMA)—County-based areas defined by OMB to provide an alternative to the city-and town-based metropolitan statistical areas and consolidated metropolitan statistical areas in New England.

Outlying county—The county or counties that qualify for inclusion in a metropolitan area based on commuting ties with central counties and other specified measures of metropolitan character.

Population density—A measure of the number of people per geographic unit, usually expressed in terms of people per square mile or per square kilometer.

Population growth rate—The change in a population during a given period, as determined by births, deaths, and net migration, and commonly expressed as a percentage of the initial population.

Primary metropolitan statistical area (PMSA)—A county or group of counties that meet specified statistical criteria and receive local opinion support for recognition as a component of a consolidated metropolitan statistical area under OMB's metropolitan area standards.

Qualifier urbanized area—The urbanized area that results in qualification of a metropolitan area.

* **Rural community area (RCA)**—A geographic entity containing geographic units not included within a statistical settlement area, metropolitan region, mesopolitan region, or micropolitan region, nor within associated influence areas, and defined partly in accordance with local opinion.

* **Statistical settlement area (SSA)**—A geographic entity containing a core of at least 10,000 persons and surrounding communities that are linked socially and economically, as measured by commuting.

Urbanized area (UA)—A statistical geographic area defined by the Census Bureau, consisting of a central place(s) and adjacent densely settled territory that together contain at least 50,000 people, generally with an overall population density of at least 1,000 people per square mile.

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Appendix A—Revised Standards for Defining Metropolitan Areas in the 1990s

Part I. Overview

Part I gives the structure of this document. Part II describes the changes from the previous standards and the reasons for the changes. Part III gives the official metropolitan area standards for the 1990s. Part IV gives a list of definitions of key terms and guidelines used in the standards. The terms in Part IV are listed in alphabetical order.

In Part III, sections 1 through 7 contain the basic standards for defining metropolitan statistical areas in all States except the New England States. They specify standards for determining: how large a population nucleus must be to qualify as an MSA (section 1); the central county/counties of the MSA (section 2); additional outlying counties with sufficient metropolitan character and integration to the central county/counties to qualify for inclusion in the MSA (section 3); the central city or cities of each MSA (section 4); whether two adjacent MSAs qualify to be combined (section 5); four categories or levels of MSAs, based on the total population

of each area (section 6); and the title of each MSA (section 7).

Sections 8 through 10 provide a framework for identifying PMSAs within an MSA of at least one million population. If such PMSAs are identified, the larger area of which they are components is designated a CMSA.

Sections 11 through 15 apply only to the New England States. In these States, metropolitan areas are composed of cities and towns rather than whole counties. Sections 11, 12, and 13 specify how New England MSAs are defined and titled. Sections 14 and 15 show how CMSAs and PMSAs are defined and titled.

Section 16 sets forth the standards for updating definitions between decennial censuses.

Part II. Changes in the Standards for the 1990s

The metropolitan area standards for the 1990s generally reflect a continuity with those adopted for the 1980s, and they maintain the basic concepts originally developed in 1950. The substantive modifications of the standards are specified below. Some other modifications have been made that involve word changes but not substance.

1. Effective April 1, 1990, the set of areas known as Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), and Consolidated Metropolitan Statistical Areas (CMSAs) will be designated collectively as Metropolitan Areas (MAs). The reason for this change is to distinguish between the individual areas known as MSAs and the set of all areas.

2. A small group of counties containing a portion of a city's urbanized area will now qualify as outlying, even though their population density is relatively low. This change allows the inclusion in metropolitan areas of entire urbanized areas.

3. Counties included solely because they contain at least 2,500 population in a central city now will be assigned outlying county rather than central county status (section 3A(6)). This will ensure that additional outlying counties will not be designated solely because of commuting with a county including a small portion of the central city.

4. The largest city, and other cities of at least 15,000 in a secondary noncontiguous urbanized area within a metropolitan statistical area, now may be identified as central cities, provided that the other requirements for central cities are met (sections 4E and 4F). This allows cities that perform as central cities in secondary noncontiguous urbanized areas to be designated as central cities.

5. The employment criterion for inclusion in an area title is deleted; only the population criteria remain (section 7). This change was made because in 1980 only one area qualified based on employment.

6. A place qualifying as a central city but with less than one-third the population of the largest city may now be included in the metropolitan statistical area title if strongly supported by local opinion (section 7A(3)). Communities often have strong views on the way their MSAs are titled. This change allows taking these views into account.

7. The presence of a small portion (less than 2,500 population) of the largest city of a CMSA in a county no longer precludes consideration of that county as a PMSA (section 8B(4)). Such a small portion of a city does not alter the characteristics of the PMSA.

8. We have added standards for intercensal updating of metropolitan areas (section 16). These standards existed separately, but we felt they should be incorporated into the published standards.

9. Qualifying percentages and ratios are considered to one decimal and ratios on the basis of two decimals (in each case, one less decimal than previously) (Part IV). The previous standards implied a level of accuracy that was not justified.

10. Several technical adjustments were made (Part IV). For example, localities in Puerto Rico officially known as *aldeas* in 1980, are now termed *comunidades*.

Part III. Official Standards for Metropolitan Areas

Basic Standards. Sections 1 through 7 apply to all States except the six New England States, that is, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. They also apply to Puerto Rico.¹

Section 1. Population Size Requirements for Qualification

Each metropolitan statistical area must include:

A. A city of 50,000 or more population, or²
B. A Census Bureau defined urbanized area of at least 50,000 population, provided that the component county/counties of the metropolitan statistical area have a total population of at least 100,000.³

Section 2. Central Counties

The central county/counties of the MSA are:

A. Those counties that include a central city (see section 4) of the MSA, or at least 50 percent of the population of such a city, provided the city is located in a qualifier urbanized area; and B. Those counties in which at least 50 percent of the population lives in the qualifier urbanized area(s).

Section 3. Outlying Counties

A. An outlying county is included in an MSA if any one of the six following conditions is met:

(1) At least 50 percent of the employed workers residing in the county commute to the central county/counties, and either
(a) The population density of the county is at least 25 persons per square mile, or

(b) At least 10 percent, or at least 5,000, of the population lives in the qualifier urbanized area(s);

(2) From 40 to 50 percent of the employed workers commute to the central county/counties, and either

(a) The population density is at least 35 persons per square mile, or

(b) At least 10 percent, or at least 5,000, of the population lives in the qualifier urbanized area(s);

(3) From 25 to 40 percent of the employed workers commute to the central county/counties and either the population density of the county is at least 50 persons per square mile, or any two of the following conditions exist:

(a) Population density is at least 35 persons per square mile,

(b) At least 35 percent of the population is urban,

(c) At least 10 percent, or at least 5,000, of the population lives in the qualifier urbanized area(s);

(4) From 15 to 25 percent of the employed workers commute to the central county/counties,⁴ the population density of the county is at least 50 persons per square mile, and any two of the following conditions also exist:

(a) Population density is at least 60 persons per square mile,

(b) At least 35 percent of the population is urban,

(c) Population growth between the last two decennial censuses is at least 20 percent,

(d) At least 10 percent, or at least 5,000, of the population lives in the qualifier urbanized area(s);

(5) From 15 to 25 percent of the employed workers commute to the central county/counties,⁴ the population density of the county is less than 50 persons per square mile, and any two of the following conditions also exist:

(a) At least 35 percent of the population is urban,

(b) Population growth between the last two decennial censuses is at least 20 percent,

(c) At least 10 percent, or at least 5,000, of the population lives in the qualifier urbanized area(s);

(6) At least 2,500 of the population lives in a central city of the MSA located in the qualifier urbanized area(s).⁵

B. If a county qualifies on the basis of commuting to the central county/counties of two different MSAs, it is assigned to the area to which commuting is greatest, unless the relevant commuting percentages are within 5 points of each other, in which case local opinion about the most appropriate assignment will be considered.

⁴ Also accepted as meeting this commuting requirement are:

(a) The number of persons working in the county who live in the central county/counties is equal to at least 15 percent of the number of employed workers living in the county; or

(b) The sum of the number of workers commuting to and from the central county/counties is equal to at least 20 percent of the number of employed workers living in the county.

⁵ See section 4 for the standards for identifying central cities.

¹ Those provisions of sections 1 through 7 that are applicable to New England are specified in the standards relating to New England (sections 11 through 15).

² An MSA designated on the basis of census data according to standards in effect at the time of designation will not be disqualified on the basis of lacking a city of at least 50,000 population.

³ An MSA designated on the basis of census data according to standards in effect at the time of designation will not be disqualified on the basis of lacking an urbanized area of at least 50,000 or a total MSA population of at least 100,000.

C. If a county qualifies as a central county under section 2 and also qualifies as an outlying county of another metropolitan area under section 3A on the basis of commuting to (or from) another central county, both counties become central counties of a single merged MSA.

Section 4. Central Cities

The central city/cities of the MSA are:

A. The city with the largest population in the MSA;

B. Each additional city with a population of at least 250,000 or with at least 100,000 persons working within its limits;

C. Each additional city with a population of at least 25,000, an employment/residence ratio of at least 0.75, and at least 40 percent of its employed residents working in the city;

D. Each city of 15,000 to 24,999 population that is at least one-third as large as the largest central city, has an employment/residence ratio of at least 0.75, and has at least 40 percent of its employed residents working in the city;

E. The largest city in a secondary noncontiguous urbanized area, provided it has at least 15,000 population, an employment/residence ratio of at least 0.75, and has at least 40 percent of its employed residents working in the city;

F. Each additional city in a secondary noncontiguous urbanized area that is at least one-third as large as the largest central city of that urbanized area, that has at least 15,000 population and an employment/residence ratio of at least 0.75, and that has at least 40 percent of its employed residents working in the city.

Section 5. Combining Adjacent Metropolitan Statistical Areas

Two adjacent MSAs defined by sections 1 through 4 are combined as a single MSA provided:

A. The total population of the combination is at least one million, and:

(1) The commuting interchange between the two MSAs is equal to:

(a) At least 15 percent of the employed workers residing in the smaller MSA, or

(b) At least 10 percent of the employed workers residing in the smaller MSA, and

(i) The urbanized area of a central city of one MSA is contiguous with the urbanized area of a central city of the other MSA, or

(ii) A central city in one MSA is included in the same urbanized area as a central city in the other MSA; and

(2) At least 60 percent of the population of each MSA is urban.

B. The total population of the combination is less than one million and:

(1) Their largest central cities are within 25 miles of one another, or their urbanized areas are contiguous; and

(2) There is definite evidence that the two areas are closely integrated with each other economically and socially; and

(3) Local opinion in both areas supports the combination.

Section 6. Levels

A. Each MSA defined by sections 1 through 5 is categorized in one of the following levels based on total population:

Level A—MSAs of 1 million or more;

Level B—MSAs of 250,000 to 999,999;

Level C—MSAs of 100,000 to 249,999; and

Level D—MSAs of less than 100,000.

B. Areas assigned to Level B, C, or D are designated as MSAs. Areas assigned to Level A are not finally designated or titled until they have been reviewed under sections 8 and 9.

Section 7. Titles of Metropolitan Statistical Areas (MSAs)

A. The title of an MSA assigned to Level B, C, or D includes the name of the largest central city, and up to two additional city names, as follows:

(1) The name of each additional city with a population of at least 250,000;

(2) The names of the additional cities qualified as central cities by section 4, provided each is at least one-third as large as the largest central city; and

(3) The names of other central cities (up to the maximum of two additional names) if local opinion supports the resulting title.

B. An area title that includes the names of more than one city begins with the name of the largest city and lists the other cities in order of their population according to the most recent national census.⁶

C. In addition to city names, the title contains the name of each State in which the MSA is located.

Standards for Primary and Consolidated Metropolitan Statistical Areas (PMSAs and CMSAs)

Sections 8 through 10 apply to Level A metropolitan statistical areas outside New England.

Section 8. Qualifications for Designation of Primary Metropolitan Statistical Areas (PMSAs)

Within a Level A MSA:

A. Any county or group of counties that was designated an SMSA on January 1, 1980, will be designated a PMSA, unless local opinion does not support its continued separate designation for statistical purposes.

B. Any additional county/counties for which local opinion strongly supports separate designation will be considered for identification as a PMSA, provided one county is included that has:

(1) At least 100,000 population;

(2) At least 60 percent of its population urban;

(3) Less than 35 percent of its resident workers working outside the county; and

(4) Less than 2,500 population of the largest central city of the Level A MSA.

C. A set of two or more contiguous counties for which local opinion strongly

⁶The largest central city included in an existing metropolitan area title will not be resequenced in or displaced from that title until both its population and the number of persons working within its limits are exceeded by those of another city qualifying for the area title.

supports separate designation, and that may include a county or counties that also could qualify as a PMSA under section 8B, also will be considered for designation as a PMSA, provided:

(1) Each county meets requirements (1), (2), and (4) of section 8B, and has less than 50 percent of its resident workers working outside the county;

(2) Each county in the set has a commuting interchange of at least 20 percent with the other counties in the set; and

(3) The set of two or more contiguous counties has less than 35 percent of its resident workers working outside its area.

D. Each county in the interim Level A MSA, not included within a central core under sections 8A through C, is assigned to the contiguous PMSA to whose central core commuting is greatest, provided this commuting is:

(1) At least 15 percent of the county's resident workers;

(2) At least 5 percentage points higher than the commuting flow to any other PMSA central core that exceeds 15 percent; and

(3) Larger than the flow to the county containing the Level A MSA's largest central city.

E. If a county has qualifying commuting ties to two or more PMSA central cores and the relevant values are within 5 percentage points of each other, local opinion is considered before the county is assigned to any PMSA.

F. The interim PMSA definitions resulting from these procedures (including possible alternative definitions, where appropriate) are submitted to local opinion. Final definitions of PMSAs are made based on these standards, and a review of local opinion.

G. If any primary metropolitan statistical area or areas have been recognized under sections 8 A through F, the balance of the Level A metropolitan statistical area, which includes its largest central city, also is recognized as a primary metropolitan statistical area.⁷

Section 9. Levels and Titles of Primary Metropolitan Statistical Areas

A. PMSAs are categorized in one of four levels according to total population, following the standards of Section 6A.

B. PMSAs are titled in either of two ways:

(1) Using the names of up to three cities in the primary metropolitan statistical area that have qualified as central cities of the Level A MSA under section 4, following the standards of section 7 for selection and sequencing; or

(2) Using the names of up to three counties in the PMSA, sequenced in order from largest to smallest population.

C. Local opinion on the most appropriate title will be considered.

⁷If section 8G would result in the balance of the Level A metropolitan statistical area including a noncontiguous county, this county will be added to the contiguous primary metropolitan statistical area to which the county has the greatest commuting.

Section 10. Designation and Titles of Consolidated Metropolitan Statistical Areas

A. A Level A metropolitan statistical area in which two or more primary metropolitan statistical areas are identified by section 8 is designated a consolidated metropolitan statistical area. If no primary metropolitan statistical areas are defined, the Level A area remains a metropolitan statistical area, and is titled according to section 7.

B. Consolidated metropolitan statistical areas are titled according to the following guidelines. Local opinion is always sought before determining the title of a consolidated metropolitan statistical area.

(1) The title of each area includes up to three names, the first of which is always the name of the largest central city in the area. A change in the first-named city in the title will not be made until both its population and the number of persons working within its limits are exceeded by the those of another city in the consolidated area.

(2) The preferred basis for determining the two remaining names is:

(a) The first city (or county) name that appears in the title of the remaining primary metropolitan statistical area with the largest total population; and

(b) The first city (or county) name that appears in the title of the primary metropolitan statistical area with the next largest total population.

(3) A regional designation may be substituted for the second and/or third names in the title if there is strong local support and the proposed designation is unambiguous and suitable for inclusion in a national standard.

Standards for New England

In the six New England States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, the cities and towns are administratively more important than the counties, and a wide range of data is compiled locally for these entities. Therefore, the cities and towns are the units used to define metropolitan areas in these States. The New England standards are based primarily on population density and commuting. As a basis for measuring commuting, a central core is first defined for each New England urbanized area.

In New England, there is an alternative county-based definition of MSAs known as the New England County Metropolitan Areas (NECMAs) (see Part IV).

Section 11. New England Central Cores

A central core is determined in each New England urbanized area through the definition of two zones.

A. Zone A comprises:

(1) The largest city in the urbanized area;

(2) Each additional place in the urbanized area or in a contiguous urbanized area that qualifies as a central city under section 4, provided at least 15 percent of its resident employed workers work in the largest city in the urbanized area;⁸

⁸ Also accepted as meeting this commuting requirement are:

(a) The number of persons working in the subject city or town who live in the specified city or area

(3) Each additional city or town at least 50 percent of whose population lives in the urbanized area or a contiguous urbanized area, provided at least 15 percent of its resident employed workers work in the largest city in the urbanized area plus any additional central cities qualified by section 11A(2).⁸

B. Zone B comprises each city or town that has:

(1) At least 50 percent of its population living in the urbanized area or in a contiguous urbanized area; and

(2) At least 15 percent of its resident employed workers working in Zone A.⁸

C. The central core comprises Zone A, Zone B, and any city or town that is physically surrounded by Zones A or B, except that cities or towns that are not contiguous with the main portion of the central core are not included.

D. If a city or town qualifies under sections 11A through C for more than one central core, it is assigned to the core to which commuting is greatest, unless the relevant commuting percentages are within 5 points of each other, in which case local opinion as to the most appropriate assignment also is considered.

Section 12. Outlying Cities and Towns

A. A city or town contiguous to a central core as defined by section 11 is included in its metropolitan statistical area if:

(1) It has a population density of at least 60 persons per square mile and at least 30 percent of its resident employed workers work in the central core; or

(2) It has a population density of at least 100 persons per square mile and at least 15 percent of the employed workers living in the city or town work in the central core.⁹

B. If a city or town has the qualifying level of commuting to two different central cores, it is assigned to the metropolitan statistical area to which commuting is greatest, unless the relevant commuting percentages are within 5 points of each other, in which case local opinion as to the most appropriate assignment also is considered.

C. If a city or town has the qualifying level of commuting to a central core, but has greater commuting to a nonmetropolitan city or town, it will not be assigned to any metropolitan statistical area unless the relevant commuting percentages are within 5 points of each other, in which case local opinion as to the most appropriate assignment will also be considered.

is equal to at least 15 percent of the employed workers living in the subject city or town; or

(b) The sum of the number of workers commuting to and from the specified city or area is equal to at least 20 percent of the employed workers living in the subject city or town.

⁹ This commuting requirement is also considered to have been met if:

(a) The number of persons working in the city or town who live in the central core is equal to at least 15 percent of the employed workers living in the city or town.

(b) The sum of the number of workers commuting to and from the central core is equal to at least 20 percent of the employed workers living in the city or town.

Section 13. Applicability of Basic Standards to New England Metropolitan Statistical Areas

A. An area defined by sections 11 and 12 qualifies as a metropolitan statistical area if it contains a city of at least 50,000 population or has a total population of at least 75,000.¹⁰

B. The area's central cities are determined according to the standards of section 4.

C. Two adjacent New England metropolitan statistical areas are combined as a single metropolitan statistical area provided the conditions of section 5A are met. Section 5B is not applied in New England.

D. Each New England metropolitan statistical area defined by sections 13A through C is categorized in one of the four levels specified in section 6A. Areas assigned to Level B, C, or D are designated as metropolitan statistical areas. Areas assigned to Level A are not finally designated until they have been reviewed under sections 14 and 15.

E. New England metropolitan statistical areas are titled according to the standards of section 7.

Section 14. Qualification for Designation of Primary Metropolitan Statistical Areas (PMSAs)

The following are qualifications within a Level A metropolitan statistical area in New England:

A. Any group of cities and towns that was recognized as a standard metropolitan statistical area on January 1, 1980, will be recognized as a primary metropolitan statistical area, unless local opinion does not support its continued separate recognition for statistical purposes.

B. Any additional group of cities and/or towns for which local opinion strongly supports separate recognition will be considered for designation as a primary metropolitan statistical area, if:

(1) The total population of the group is at least 75,000;

(2) It includes at least one city with a population of 15,000 or more, an employment/residence ratio of at least 0.75, and at least 40 percent of its employed residents working in the city;

(3) It contains a core of communities, each of which has at least 50 percent of its population living in the urbanized area, and which together have less than 40 percent of their resident workers commuting to jobs outside the core; and

(4) Each community in the core also has:

(a) At least 5 percent of its resident workers working in the component core city identified in section 14B(2), or at least 10 percent working in the component core city or in places already qualified for this core; this percentage also must be greater than that to any other core or to the largest city of the Level A MSA; and

(b) At least 20 percent commuting interchange with the component core city together with other cities and towns already

¹⁰ A New England metropolitan statistical area designated on the basis of census data according to standards in effect at the time of designation will not be disqualified on the basis of lacking a total population of at least 75,000.

qualified for the core; this interchange also must be greater than with any other core or with the largest city of the Level A MSA.

C. Contiguous component central cores may be merged as a single core if:

(1) Section 14B would qualify the component core city of one core for inclusion in the other core; and

(2) There is substantial local support for treating the two as a single core.

D. Each city or town in the interim Level A MSA not included in a core under sections 14A through C is assigned to the contiguous PMSA to whose core its commuting is greatest, if:

(1) This commuting is at least 15 percent of the place's resident workers; and

(2) The commuting interchange with the core is greater than with the Level A MSA's largest city.

E. If a city or town has qualifying commuting ties to two or more cores and the relevant values are within 5 percentage points of each other, local opinion is considered before the place is assigned to any PMSA.

F. The interim PMSA definitions resulting from these procedures (including possible alternative definitions, where appropriate) are submitted to local opinion. Final definitions of PMSAs are made based on these standards, and a review of local opinion.

G. If any primary metropolitan statistical area or areas have been recognized under sections 14A through F, the balance of the Level A metropolitan statistical area, which includes its largest city, also is recognized as a primary metropolitan statistical area.¹¹

Section 15. Levels and Titles of Primary Metropolitan Statistical Areas and Consolidated Metropolitan Statistical Areas in New England

A. New England primary metropolitan statistical areas are categorized in one of four levels according to total population, following section 6A.

B. New England primary metropolitan statistical areas are titled using the names of up to three cities in the primary area that have qualified as central cities under section 4, following the standards of section 7 for selection and sequencing.

C. Each Level A metropolitan statistical area in New England in which primary metropolitan statistical areas have been identified and supported by local opinion (according to section 14) is designated a consolidated metropolitan statistical area. Titles of New England consolidated metropolitan statistical areas are determined following the standards of section 10. A Level A metropolitan statistical area in which no primary metropolitan statistical areas have been defined is designated a metropolitan statistical area, and is titled according to the rules of section 7.

¹¹ If section 14G results in the balance of the Level A metropolitan statistical area including a noncontiguous city or town, this place will be added to the contiguous primary metropolitan statistical area to which it has the greatest commuting.

Section 16. Intercensal Metropolitan Area Changes

A. Definitions.

(1) A *Census Count* is a special census conducted by the U.S. Bureau of the Census or a decennial census count updated to reflect annexations and boundary changes since the census.

(2) A *Census Bureau Estimate* is a population estimate issued by the U.S. Bureau of the Census for an intercensal year.

B. *Qualification for Designation of a Metropolitan Statistical Area.* The qualifications for designation are as follows:

(1) A city reaches 50,000 population according to a Census Count or Census Bureau Estimate.

(2) A nonmetropolitan county containing an urbanized area (UA) defined by the Bureau of the Census at the most recent decennial census reaches 100,000 population according to a Census Count or Census Bureau Estimate. If the potential metropolitan statistical area centered on the urbanized area consists of two or more counties, their total population must reach 100,000. In New England, the cities and towns qualifying for the potential metropolitan statistical area must reach a total population of 75,000.

(3) The Census Bureau defines a new urbanized area based on a Census Count after the decennial census, and the potential metropolitan statistical area containing the urbanized area meets the population requirements of section 16.B(2).

If a metropolitan statistical area is qualified intercensally by a Census Bureau Estimate, the qualification must be confirmed by the next decennial census, or the area is disqualified.

C. *Addition of Counties.* Counties are not added to metropolitan statistical areas between censuses, except as follows:

(1) If a central city located in a qualifier urbanized area extends into a county not included in the metropolitan statistical area and the population of the portion of the city in the county reaches 2,500 according to a Census Count, then the county qualifies as an outlying county and is added to the metropolitan statistical area.

(2) If a metropolitan statistical area qualified intercensally under section 16B meets the requirements of section 5B for combination with a metropolitan statistical area already recognized, that combination may take place and thereby alter the definition of the existing metropolitan statistical area.

D. *Qualification for Designation of a Central City.* A Census Count serves to qualify a central city (section 4) that has failed to qualify solely because its population was smaller than required—for example, it did not qualify as the largest city of the metropolitan statistical area (section 4A), or was below 250,000 (4B), below 25,000 (4C), or below 15,000 (4D–F). If qualification requires comparison with the population of another city, comparison is made with the latest available Census Bureau Estimate or Census Count of the population of the other city.

E. *Area Titles.* The title of a metropolitan statistical area, primary metropolitan

statistical area, or consolidated metropolitan statistical area may be altered to include the name of a place that has newly qualified as a central city on the basis described in section 16D, and that also meets the requirements of section 7. Such a change is made by adding the new name at the end of the existing title, but cannot be made if the title already contains three names. Names in area titles are not resequenced except on the basis of a decennial census.

F. Other aspects of the metropolitan area definitions are not subject to change between censuses.

Part IV. General Procedures and Definitions

This part specifies certain important guidelines regarding the data and procedures used in implementing the standards. It also gives definitions for "city," "urbanized area," and other key terms.

General Procedures

Local Opinion. Local opinion is the reflection of the views of the public on specified matters relating to the application of the standards for defining metropolitan areas, obtained through the appropriate congressional delegation, and considered after the thresholds in the statistical standards have been met. Members of the congressional delegation will be urged to contact a wide range of groups in their communities, including business or other leaders, Chambers of Commerce, planning commissions, and local officials, to solicit comments on specified issues. OMB will consider all pertinent local opinion material on these matters in determining the final definition and title of the area. After a decision has been made on a particular matter, OMB will not again request local opinion on the same question until after the next national census.

Local opinion is considered for:

(a) Combining two adjacent metropolitan statistical areas (of less than one million population) whose central cities are within 25 miles of each other (section 5B).

(b) Metropolitan statistical area titles (section 7A(3)).

(c) Identifying primary metropolitan statistical areas within consolidated metropolitan statistical areas (sections 8 and 14).

(d) Titling primary metropolitan statistical areas (sections 9 and 15).

(e) Titling consolidated metropolitan statistical areas after identification of the largest city (sections 10 and 15).

(f) Assignment of a county or place that, based on commuting, is eligible for inclusion in more than one area (sections 3B, 8E, 11D, 12B and 12C, and 14E).

New England County Metropolitan Areas (NECMAs). The New England County Metropolitan Areas (NECMAs) provide an alternative to the official city-and-town-based metropolitan statistical areas in that region for the convenience of data users who desire a county-defined set of areas.

The NECMA for a metropolitan statistical area includes:

1. The county containing the first-named city in the metropolitan statistical area title. In some cases, this county will contain the

first-named city of one or more additional metropolitan statistical areas.

2. Each other county which has at least half of its population in the metropolitan statistical area(s) whose first-named cities are in the county identified in step 1.

The NECMA for a consolidated metropolitan statistical area also is defined by the above rules, except that the New England portion of the consolidated metropolitan statistical area which includes New York City is used as the basis for defining a separate NECMA. No NECMAs are defined for individual primary metropolitan statistical areas.

The central cities of a NECMA are those cities in the NECMA that qualify as central cities of a metropolitan statistical area or consolidated metropolitan statistical area; some central cities may not be included in any NECMA title.

The title of the NECMA includes each city in the NECMA that is the first-named title city of a metropolitan area, in descending order of metropolitan statistical area (or primary metropolitan statistical area) total population. Other cities that appear in metropolitan area titles are included only if the resulting NECMA title would consist of no more than three names.

Levels for NECMAs are determined following section 6A of the official metropolitan area standards.

Percentages, Densities, and Ratios. Percentages and densities are computed to the nearest tenth (one decimal); ratios are computed to the nearest one hundredth (two decimals); and comparisons between them are made on that basis.

Populations. In general, the population data required by the standards are taken from the most recent national census. However, in certain situations either (1) the results of a special census taken by the Bureau of the Census, or (2) a population estimate published by the Bureau of the Census may be used to meet the requirements of the standards (section 16).

Review of Cutoffs and Values. OMB has promulgated these standards with the advice of the Federal Executive Committee on Metropolitan Areas, following an open period of public comment. After the 1990 decennial census data become available, the Federal Executive Committee will review the census data and their implications for the cutoffs and values used in the standards, and will report to OMB the results of its review.

Definitions of Key Terms

Central Core—The counties (or cities and towns in New England) that are eligible for initial delineation as primary metropolitan statistical areas because they meet specified population and commuting criteria.

City—The term "city" includes:

(a) Any place incorporated under the laws of its State as a city, village, borough (except in Alaska), or town (except in the New England States, New York, and Wisconsin). These comprise the category of incorporated places recognized in Bureau of the Census publications.

(b) In Hawaii, any place recognized as a census designated place by the Bureau of the Census in consultation with the State

government; in Puerto Rico, any place recognized as a *zona urbana* or a *comunidad* by the Bureau of the Census in consultation with the Commonwealth government. (Hawaii and Puerto Rico do not have legally defined cities corresponding to those of most States.)

(c) Any township in Michigan, Minnesota, New Jersey, or Pennsylvania, and any town in the New England States, New York, or Wisconsin, at least 90 percent of whose population is classified by the Bureau of the Census as urban, provided it does not contain any part of a dependent incorporated place.

Commuting Interchange—The commuting interchange between two areas is the sum of the number of workers who live in either of the areas but work in the other.

County—For purposes of the standards, the term "county" includes county equivalents, such as parishes in Louisiana and boroughs and census areas (formerly census divisions) in Alaska. Certain States contain cities that are independent of any county; such independent cities in Maryland, Missouri, and Nevada are treated as county equivalents for purposes of the standards.

In Virginia, where most incorporated places of more than 15,000 are independent of counties, the standards usually regard each such city as included in the county from which it was originally formed, or primarily formed. In certain exceptional cases, the city itself is treated as a county equivalent, as follows:

(a) An independent city that has absorbed its parent county (Chesapeake, Hampton, Newport News, Suffolk, Virginia Beach); and

(b) An independent city associated with an urbanized area other than the one with which its parent county is primarily associated (for example, Colonial Heights).

A county included in a metropolitan area is either a central (section 2), or an outlying (section 3) county. An outlying county must be contiguous with a central county or with an outlying county that has already qualified for inclusion.

Employment/Residence Ratio—This ratio is computed by dividing the number of persons working in the city by the number of resident workers with place of work reported. (These items are taken from the most recent national census.) For example, a city with an equal number of jobs and working residents has an employment/residence ratio of 1.00.

Interim Area—An area that meets the requirements of sections 1 through 4, or sections 11 through 13, for metropolitan statistical area qualification, which needs to be further examined to determine: (1) if it qualifies for combination with any adjacent interim area, (2) its final level, based on population; and (3) if the area has 1 million or more population, the identification of primary metropolitan statistical areas, if any, and the preferences, expressed through local opinion, for consolidated or individual identity.

Largest Central City—The largest central city of a metropolitan area is the central city with the greatest population at the time of the initial metropolitan area designation. Once determined, the largest central city will not be replaced until both its population and the

number of persons working within its limits are exceeded by those of another city in the area.

Outcommuting—The number (or percent) of workers living in a specified area, such as a city or a county, whose place of work is located outside that area.

Qualifier Urbanized Area—The qualifier urbanized area(s) for a metropolitan statistical area are:

1. The urbanized area that resulted in qualification under section 1B or the urbanized area containing the city that resulted in qualification under section 1A.

2. Any other urbanized area whose largest city is located in the same county as the largest city of the urbanized area identified in paragraph one above, or has at least 50 percent of its population in that county.

Secondary Noncontiguous Urbanized Area—An additional urbanized area within a metropolitan statistical area that has no common boundary of more than a mile with the main urbanized area around which the metropolitan statistical area is defined.

Standard Metropolitan Statistical Area—The term used from 1959 to 1983 to describe the statistical system of metropolitan areas, and the areas as individually defined. It was preceded by Standard Metropolitan Area (SMA) from 1950 to 1959, and superseded by Metropolitan Statistical Area in 1983. That term was adopted when the current system formally recognizing consolidated metropolitan statistical areas and their component primary metropolitan statistical areas was put in place. The term Metropolitan Area (MA) is used to describe the system and the areas collectively, but the individual areas will retain the MSA, CMSA, and PMSA nomenclature.

Urban—The Bureau of the Census classifies as urban:

(a) The population living in urbanized areas; plus

(b) The population in other incorporated or census designated places of at least 2,500 population at the most recent national census.

Urbanized Area—An area defined by the Bureau of the Census according to specific criteria, designed to include the densely settled area around a large place. The definition is based primarily on density rather than governmental unit boundaries. An urbanized area must have a total population of at least 50,000. (See qualifier urbanized area and secondary noncontiguous urbanized area).

Appendix B—OMB Memorandum M-94-22, "Use of Metropolitan Area Definitions"

May 5, 1994

M-94-22

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES
FROM: Leon E. Panetta
SUBJECT: Use of Metropolitan Area Definitions

On December 28, 1992, the Office of Management and Budget issued revised metropolitan area (MA) definitions to reflect shifts in population and other demographic changes that had occurred during the preceding decade. At the time the revisions

were announced, we provided guidance (OMB Bulletin 93-05) to Federal departments and agencies concerning the use of MA definitions for statistical purposes.

During the past year, we have received a substantial number of letters from Members of Congress, local government officials, and others involved with administering various Federal programs. For the most part, their correspondence has been related to nonstatistical uses of the MA definitions in the allocation of Federal program funds. Their concerns have highlighted the need to reiterate the purposes for which OMB defines metropolitan areas and our advice with respect to other uses agencies may make of these definitions.

The metropolitan area classification provides a nationally consistent set of definitions suitable for collecting, tabulating, and publishing Federal statistics. The definitions of metropolitan areas are established and maintained solely for statistical purposes. In periodically reviewing and revising the MA definitions, OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions, nor will OMB modify the definitions to meet the requirements of any nonstatistical program.

We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating Federal funds. For example, the Health Care Financing Administration uses MAs to define labor market areas and gather hospital wage data that are used in developing a hospital wage index for the labor related portion of a hospital's standardized Medicare payment. The Department of Housing and Urban Development's Community Development Block Grant (CDBG) program targets 70 percent of CDBG funds to "entitlement communities" which include cities of 50,000 or more or central cities of MAs. We will continue to work with the Congress to clarify the foundations of the metropolitan area definitions and the resultant, often unintended consequences of their use for nonstatistical purposes.

In cases where there is no statutory requirement and an agency elects to use the MA definitions in a nonstatistical program, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. When an agency is publishing for comment a proposed regulation that would use the MA definitions for a nonstatistical purpose, the agency should seek public comment on the proposed use of the MA definitions.

I would appreciate your sharing this information with others in your department or agency.

Note: The latest version of OMB Bulletin 93-05, referenced above, is OMB Bulletin No. 98-06, issued on June 23, 1998.

Appendix C—Summary of the Conference on New Approaches to Defining Metropolitan and Nonmetropolitan Areas

This conference, held on November 29-30, 1995 in Bethesda, Maryland, constituted part

of the Office of Management and Budget's metropolitan area standards review that is to be completed by spring 2000. The conference provided an open forum for discussion of proposed alternative approaches to defining metropolitan and nonmetropolitan areas, as well as discussion of the current metropolitan area standards. Presentations of findings from four commissioned studies of alternative approaches to defining areas were the centerpiece of the conference. Papers from these studies were published in *Metropolitan and Nonmetropolitan Areas: New Approaches to Geographical Definition*, Population Division Working Paper No. 12, Bureau of the Census.

Conference Points of General Agreement

- The Federal Government should define standard metropolitan and nonmetropolitan areas.
- The metropolitan and nonmetropolitan areas defined should cover the entire territory of the United States and better account for the full range of settlement patterns than do the current, dichotomous metropolitan areas and nonmetropolitan residual.
- Metropolitan and nonmetropolitan areas should be defined according to the same set of rules for all parts of the country.
- A county-based set of metropolitan and nonmetropolitan areas is necessary, but also there should be alternative, sub-county unit-based areas.
- Familiar components of settlement—including those represented by today's metropolitan area definitions—should be in evidence in a new system.

Conference Views on Major Questions

The conference explicitly addressed a list of major questions that are fundamental to any set of areas defined by the Federal Government. These same questions had been addressed in the commissioned studies that were the centerpiece of the conference. Presented here are summaries of the conference discussions of these questions.

What should be the basic geographic units for defining areas? There was strong consensus that there must be a county-based set of defined areas for reasons of data availability, comparability, and familiarity, but also there were comments favoring additional sets of areas based on sub-county units for greater precision and special purposes. There were suggestions that multiple sets of areas should be provided, along with documentation on appropriate uses of those sets. There also were suggestions that the Census Bureau and the Office of Management and Budget should facilitate "do-it-yourself" definitions by making readily available as much small-area data as possible.

What should be the criteria for aggregating the basic units? Commuting data as obtained from the decennial census were regarded as the best measure for defining areas by most individuals addressing this question. Other data-including electronic media and newspaper market penetration data, local traffic study data, and wholesale distribution

data-are available and usable for specific purposes. Population and housing density data are useful for some purposes within the definition task. Employment density also received mention.

Should there be hierarchies or multiple sets of areas? As already noted, there were comments favoring use of different geographic units to define sets of areas that would be available for different purposes. There also was discussion—without any clear outcome—of classifying entities within a nationwide metropolitan/nonmetropolitan definition framework into such categories as inner city and suburban.

What kinds of areas should receive official recognition? Inner city, suburban, and exurban all received mention as areas that should be recognized within metropolitan and nonmetropolitan areas, but this issue was not fully addressed.

Should a new system provide nationwide territorial coverage? There was strong agreement that the areas defined should cover the Nation's entire territory.

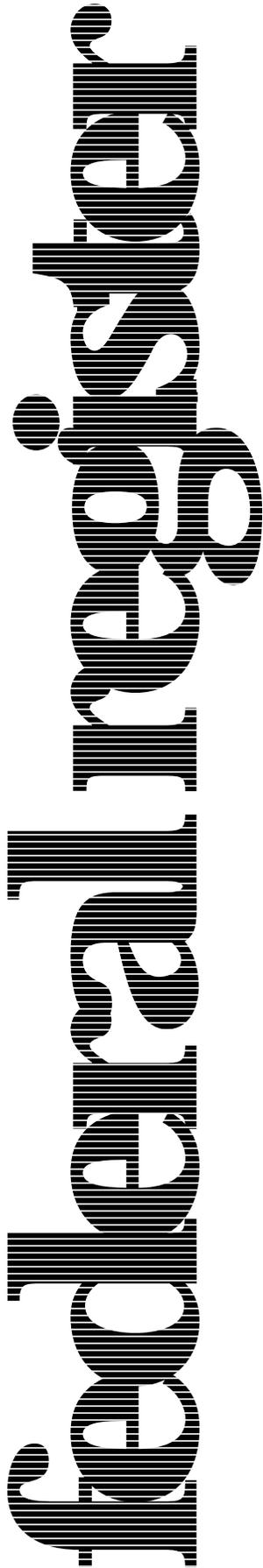
Should the definition process follow strictly statistical rules or allow a role for local opinion? There were reservations regarding the usefulness of local opinion in a program of standard statistical areas, but the majority view expressed was that soliciting local opinion can serve a useful purpose, particularly in providing room for accommodation on some issues of local significance without threatening the integrity of the national system. The incorporation of local opinion, two individuals noted, should come early in the definition process.

What should be the frequency of updating? There was little discussion of this topic, as the frequency of updating depends heavily on decisions concerning basic geographic units, criteria for aggregation, and data availability.

Should the Federal Government define metropolitan and nonmetropolitan areas? The overall view was strongly in favor of metropolitan and nonmetropolitan areas being defined, although a few individuals seemed to support the idea of ceasing the Federal Government's activity in this arena altogether. Areas defined by the Federal Government offer to a wide community of data users the advantage of direct data comparability, i.e., data from different sources for areas with the same boundaries. This advantage may rise in importance in the face of programs shifting to states. There also were those who argued in favor of a standard set of areas on the grounds that such areas were useful for non-statistical program administration. Others noted that the absence of a standard set of areas probably would produce competing sets of areas from different Federal agencies.

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Monday
December 21, 1998

Part IV

**Federal
Communications
Commission**

47 CFR Parts 54 and 69

**Changes to the Board of Directors of the
National Exchange Carrier Association,
Inc., Federal-State Joint Board on
Universal Service; Final Rule**

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 54 and 69**

[CC Docket Nos. 97-21 and 96-45; FCC 98-306]

Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we reconsider the current organizational structure for administering the universal service support mechanisms and adopt a plan for merging the Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC) into the Universal Service Administrative Company (USAC) by January 1, 1999. We substantially adopt the Report and Proposed Plan of Reorganization (the Plan) filed with the Commission by USAC, SLC, and RHCC on July 1, 1998, with certain modifications. We also adopt specific procedures under which administrative decisions made by USAC will be reviewable by the Commission.

DATES: These rules are effective January 1, 1999, except for § 54.701, which is effective December 1, 1998; and §§ 54.703(c) and 54.721, which contain modified information collection requirements and will not become effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for §§ 54.703(c) and 54.721.

FOR FURTHER INFORMATION CONTACT: Sharon Webber, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on November 20, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., 20554.

Summary of Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45

I. Introduction

1. In this Order, we reconsider the current organizational structure for administering the universal service

support mechanisms and adopt a plan for merging the Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC) into the Universal Service Administrative Company (USAC) by January 1, 1999. We substantially adopt the Report and Proposed Plan of Reorganization (the Plan) filed with the Commission by USAC, SLC, and RHCC on July 1, 1998, with certain modifications. We also adopt specific procedures under which administrative decisions made by USAC will be reviewable by the Commission.

II. Revised Corporate Structure**A. Consolidation of Administrative Responsibilities**

2. Commenters generally support vesting in USAC the responsibility for administering all of the universal service support mechanisms, including the creation of three divisions—the Schools and Libraries Division, the Rural Health Care Division and the High Cost and Low Income Division—to oversee each of the support mechanisms.

3. We find that consolidating all of the administrative responsibilities into USAC is consistent with Congress's directive to establish a single entity to administer the universal service support mechanisms for schools, libraries, and rural health care providers, and will minimize disruption and take advantage of USAC's experience in administering the universal service support mechanisms. We conclude that USAC is uniquely qualified to assume responsibility for the administration of all of the support mechanisms in light of its current responsibility for administering the high cost and low income mechanisms and for collecting and disbursing funds for the schools and libraries and rural health care support mechanisms. We find that the appointment of USAC minimizes the potential disruption of the ongoing administration of the universal service support mechanisms that could occur were we to appoint an entity that has not previously been involved in the administration of universal service. In addition, establishing USAC as the single administrator establishes clear lines of accountability. We further believe, that the consolidation will result in administrative efficiencies. The distinct mission of each support mechanism will be preserved by establishing divisions within USAC. The divisions will perform the duties and functions currently performed by SLC, RHCC and the High Cost and Low Income Committee, as directed by the committees of the USAC Board.

4. We disagree with SBC's assertions that the revised administrative structure is flawed in light of its "erroneous" reliance on the lawfulness of USAC. SBC contends that the GAO's finding that the Commission's creation of SLC and RHCC violated the Government Corporation Control Act (GCCA) similarly applies to the Commission's creation of USAC.

5. The Commission has stated that it reasonably relied upon the authority of sections 254 and 4(i) of the Communications Act (Act) when it conditioned the approval of NECA as the temporary Administrator of the support mechanisms on NECA's formation of SLC, RHCC, and USAC. Indeed, in enacting section 254, Congress specifically contemplated that the Commission would create federal universal service support mechanisms. NECA, an independent, non-profit organization, had been administering the high cost support mechanism for more than a decade when Congress passed the Telecommunications Act of 1996. Thus, Congress was aware of NECA's role when it adopted section 254, which affirmed and expanded the Commission's authority to direct the administration of universal service and therefore, implicitly affirmed the Commission's authority to employ an independent entity to administer universal service. We find no indication that Congress sought to dismantle the existing administrative system, or to prohibit the Commission from using NECA, or another independent entity to administer universal service. USAC was created as a subsidiary of NECA. Inasmuch as USAC is a subsidiary of NECA, which was lawfully created and has the authority to administer the universal service support mechanisms, we see no statutory impediment to USAC. Moreover, we find it significant that the GAO made findings only with respect to the creation of SLC and RHCC; GAO did not make any findings concerning the establishment of USAC. We thus find that consolidating the administration of universal service into USAC is "pursuant to the findings of the General Accounting Office."

B. Limitations on USAC's Authority

6. Several commenters recommend that USAC's functions be confined strictly to applying the Commission's rules and that it be prohibited from engaging in policy making. Consistent with Congress's directive that the combined entity shall not interpret rules or statute, we emphasize that USAC's function under the revised structure will be exclusively administrative. USAC may not make policy, interpret

unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, USAC must seek guidance from the Commission on how to proceed. Furthermore, USAC may advocate positions before the Commission and Commission staff only on administrative matters relating to the universal service support mechanisms.

7. Commenters also urge the Commission to ensure USAC's accountability to the Commission. The Commission retains ultimate control over the operation of the federal universal service support mechanisms through its authority to establish the rules governing the support mechanisms and through its review of administrative decisions that are appealed to the Commission. The consolidated USAC will continue to be accountable to the Commission through the procedures that currently apply to USAC, SLC, and RHCC. In fact, USAC's appointment as permanent Administrator and the expansion of its responsibilities are conditioned on its compliance with Commission rules and orders. Existing procedures to ensure accountability include the Commission's universal service rules, which provide detailed guidance on administration of the universal service support mechanisms, annual audit requirements, regular coordination with Commission staff, and quarterly filing of projected administrative expenses and estimates of support mechanism demand. In addition, the Commission will continue to oversee the structure and content of the annual independent audit that USAC is required to undertake.

8. To foster greater accountability, we direct USAC to prepare and submit to the Commission and Congress an annual report by March 31 of each year. The Commission proposed such a report in the *Report to Congress* and several commenters supported this proposal. The annual report should detail USAC's operations, activities, and accomplishments for the prior calendar year. In addition, the annual report should provide an assessment of contractor performance. Consistent with the comments of the American Library Association (ALA) and Intermedia, we direct USAC to include in its annual report information about beneficiary and Service Provider participation in each of the universal service support mechanisms and administrative actions intended to prevent waste, fraud, and abuse by beneficiaries and service providers. USAC shall consult with Commission staff to define the scope and content of the annual report. This

report will serve as the basis for an annual review by the Commission of the universal service support mechanisms. Because the annual report will detail contractor operations, it also will enhance the Commission's oversight of contractor performance.

C. USAC Permanence and Divestiture

9. We conclude that USAC should be made the permanent Administrator and hereby dispense with the requirement that the permanent Administrator be chosen by a federal advisory committee. Many commenters support the Plan's recommendation that the Commission designate USAC as the permanent Administrator. The primary reason that USAC initially was designated as temporary rather than permanent Administrator was because the Joint Board had concerns that NECA and USAC, as a subsidiary of NECA, might be biased in favor of local exchange carriers and might not fully represent all interested parties. We conclude that, subject to the modifications set forth in this Order, USAC fairly represents all interested parties, including a broad range of industry, consumer, and beneficiary groups. Therefore, we conclude that USAC should be the permanent Administrator. We also adopt the proposal set forth in the Commission's *Report to Congress* to review USAC's performance after one year to ensure that it is administering universal service in an efficient, effective, and competitively neutral manner. Providing permanence to the revised structure will ensure USAC's ability to continue to attract and maintain qualified personnel and to prevent unnecessary disruption to contributors and beneficiaries.

10. We decline to adopt the Plan's proposal to divest USAC from NECA at this time. Rather, consistent with the Commission's proposal in the *Report to Congress* to divest USAC from NECA pending Commission review of USAC's performance after one year, we will review in one year whether USAC should remain affiliated with NECA. Retaining USAC as a subsidiary of NECA is most responsive to Congress's directive that the revised administrative structure be consistent with the GAO letter. Since NECA was established in 1983, neither GAO nor any other party has alleged that the creation of NECA was unlawful or that it violated the GCCA. Therefore, we find that retaining USAC's affiliation with NECA is responsive to concerns raised by the GAO. Moreover, maintaining USAC as a subsidiary of NECA should minimize disruption to the support mechanisms due to legal challenges. Finally, to

eliminate any further question concerning the Commission's authority to appoint USAC as the permanent Administrator, we renew our request for specific statutory authorization.

D. Changes to the USAC Board

11. We adopt the Plan's proposals to retain the current seventeen Board member positions, based on our belief that the current Board has achieved an appropriate balance of broad industry, beneficiary, and consumer representation. In addition, we are persuaded that we should add one additional rural health care provider to the Board. We also adopt the Plan's proposal to create a permanent position on the USAC Board for the USAC CEO, for a total of 19 members. Because the USAC CEO will have overall management responsibility for all of the support mechanisms, we conclude that the creation of a voting position on the Board for the USAC CEO will offer continuity and consistency to USAC's administration, and will create clear lines of accountability. We direct that USAC's by-laws be amended to reflect the addition of the USAC CEO, as well as an additional rural health care position.

12. We modify the Plan to add a second rural health care representative to the USAC Board. We agree with RHCC and numerous commenters that additional rural health care representation will assist the Board's ability to address technical issues that are unique to the rural health care community and that may fall outside of the general competence and expertise of the USAC Board as a whole. We believe that adding a second rural health care representative will help ensure that the administrative structure "take[s] into account the distinct mission of providing universal service to rural health care providers," in accordance with Congress's direction. Rather than changing the Board's composition by replacing schools and libraries representatives with rural health care provider representatives, as GTE suggests, we have determined to add a second rural health care provider representative to the Board. We find that this best ensures adequate representation of all interested groups, without disrupting the existing representation of schools and libraries, which was decided based on input from all interested parties. Accordingly, the additional rural health care representative on the Rural Health Care Board shall serve on the USAC Board.

13. We are not convinced by Intermedia's suggestion that subject matter expertise is necessary only at the

division level, and would not be helpful on the Board as well. We also decline to allocate a total of three positions on the USAC Board for rural health care interests, as requested by RHCC. Given the relatively smaller size of the rural health care mechanism compared to the schools and libraries support mechanism, we find that including two rural health care representatives ensures adequate and proportionate representation of health care interests.

14. The American Psychological Association recommends that we allocate one rural health care position specifically to a representative of rural behavioral health care providers. The Secretary of Health and Human Services recommends that we add a representative with experience in the use of telemedicine in the delivery of rural health care and another one with experience in rural public health. We are reluctant to substitute our judgment for that of the rural health care community concerning the particular categories of rural health care providers that should serve on the USAC Board. Accordingly, we will permit the rural health care community to nominate, through the consensus nomination process, the particular rural health care provider representatives who should serve on the USAC Board. This approach is consistent with the Commission's decision not to specify the particular categories of educational institutions (e.g., public versus private institutions) that are represented on the USAC Board. Rather, the Commission has permitted the education community to select, through the nomination process, the particular schools representatives who serve on the USAC Board.

15. We decline to adopt the American Library Association's recommendation that we increase library representation on the Board commensurate with any increase in rural health care representation on the Board. Although the American Library Association identifies certain universal service implementation issues that are unique to libraries, we find that, for the most part, schools and libraries face similar issues as beneficiaries of the same universal service support mechanism. As a result, in determining whether libraries are adequately represented, we find that it is appropriate to consider whether schools and libraries, as a whole, have adequate representation on the Board. We believe this is consistent with Congress's establishment of a single support mechanism for schools and libraries. Accordingly, we conclude that a total of four positions on the USAC Board adequately represents

these beneficiary interests. Furthermore, in light of the relative number of potential school and library participants, we find that it is appropriate to allocate three representatives to schools and one representative to libraries.

16. We decline to adopt one commenter's suggestion that we fundamentally alter the composition of the Board by adding a variety of industry representatives. We find that the USAC Board, as currently configured, generally has afforded fair representation of the diverse participants in, and competitively neutral administration of, the universal service support mechanisms. We are reluctant to increase further the size of the Board, absent a demonstrated need, because we are concerned that to do so might make the decision-making process more difficult.

E. USAC Committees

17. We generally find that the composition of the Committees of the Board proposed by the Plan adequately represents the variety of beneficiaries' interests and therefore we adopt, subject to the modifications, the Plan's recommendation to retain the existing High Cost and Low Income Committee and to establish two new committees of the Board: the Schools and Libraries Committee and the Rural Health Care Committee. Specifically, we adopt the Plan's proposal with respect to the make-up of the Schools and Libraries Committee. We also adopt the Plan's proposal regarding the Rural Health Care Committee, except that we add one rural health care provider to the Committee. We adopt the Plan's proposal with respect to the High Cost and Low Income Committee, except that we add one incumbent LEC to that Committee. Finally, to enhance Commission oversight of the revised administrative structure, we adopt the Plan's proposal that the USAC Board may not modify substantially the power or authority of the Committees of the Board without Commission approval.

18. We disagree with Intermedia's claims that committees are unnecessary in light of the statutory provision that limits USAC to the performance of purely administrative functions. According to Intermedia, staff in each of the divisions could provide the necessary expertise and interface with particular communities as needed. We are persuaded by the Plan, however, that the proposed committees are uniquely able to provide expertise necessary to administer the support mechanisms most effectively. For example, the Plan notes that the

committee structure will enable USAC to target communications to the particular beneficiary or service provider group impacted by a support mechanism. We conclude that the creation of specialized committees will help preserve the distinct mission of each of the support mechanisms and, in particular, is consistent with Congress's directive to "take into account the distinct mission of providing universal service to rural health care providers."

19. Numerous commenters from the rural health care community oppose the Plan's proposed composition of the Rural Health Care Committee, which consists of one rural health care representative on a seven-member committee. The majority of these commenters recommends that most, if not all, of the members of the Rural Health Care Committee should represent rural health care interests. Some commenters request that USAC establish an advisory committee that would provide guidance to USAC on rural health care issues. We share commenters' concerns with respect to rural health care representation on the Rural Health Care Committee as proposed by the Plan. Accordingly, we conclude that the Committee should include the additional rural health care representative that we allocate to the USAC Board in this Order. We find that adding a second rural health care provider will enable the committee to represent more fully the variety of beneficiaries' interests. We also find that adding an additional representative to the committee will not disturb the balance created by the Plan, which recommended three committees of approximately the same size.

20. We are not persuaded, however, that rural health care providers should comprise most or all of the committee positions, and in fact, RHCC's Separate Statement would not have resulted in a majority of rural health care providers serving on the Rural Health Care Committee. There are many different groups affected by the rural health care support mechanism, including service providers and ratepayers. We find that each interest group should have some representation on the committee. We note that the other two committees will have a broad range of interests represented, and will not be comprised solely of beneficiaries. We also reject suggestions that the Commission establish a separate advisory committee on rural health care matters. To the extent that subject matter expertise is needed, however, USAC is free to seek input from various industry and non-industry groups on particular rural health care matters.

21. The National Telephone Cooperative Association (NTCA) contends that the Plan's proposal for restructuring the High Cost and Low Income Committee would result in a committee that is not sufficiently representative of the beneficiaries of the high cost and low income mechanisms. We agree with NTCA that the "interests and perspectives of a rural carrier will vary significantly from those of a urban carrier." The Plan proposes only one incumbent LEC member of the High Cost and Low Income Committee. We find that one incumbent LEC representative may find it difficult to represent fairly the interests of both small and large carriers. To ensure that both rural and non-rural telephone companies receive adequate representation, we add one more incumbent LEC to the High Cost and Low Income Committee than proposed by the Plan. One incumbent LEC on the Board shall represent rural telephone companies, as that term is defined in section 3(37) of the Act, and one incumbent LEC shall represent non-rural telephone companies. We do not adopt NTCA's suggestion that we retain all the members of the current High Cost and Low Income Committee. We find that retaining the existing ten (10) committee members is unnecessary to represent contributors and beneficiaries of the high cost and low income support mechanisms. We also are concerned that an 11 member committee, comprised of the existing ten (10) members plus the USAC CEO, would disturb the balance achieved by the Plan in proposing three committees of approximately the same size.

F. Binding Authority of the Committees

22. We find that, by vesting in the committees the power and authority to bind the USAC Board on matters relating to the daily administration of the support mechanisms, the Plan gives the committees the autonomy and flexibility needed to administer efficiently and effectively each of the support mechanisms. We also conclude that the power vested in the USAC Board to disapprove the decision of a committee under the Board Disapproval procedure ensures that USAC is accountable for all administrative decisions. Thus, we do not believe, as some commenters suggest, that the committees' ability to bind the Board would somehow diminish the Commission's ultimate responsibility for administration of the universal service support mechanisms. Similarly, because the Board and its committees are subject to Commission rules and oversight, we do not believe, as

Intermedia suggests, that the Board Disapproval process permits the Board, through its committees, to make decisions outside the scope of its authority. We also find that subjecting committee budgets to the Board Disapproval procedure facilitates oversight of committee administrative costs. RHCC requests that the Commission grant the Rural Health Care Committee the authority to bind the full USAC Board on all "programmatic aspects." We find that such an approach would be at odds with Congress's directive to establish a single Administrator that is accountable for all decisions regarding the schools and libraries and rural health care support mechanisms.

G. The USAC CEO

23. We adopt the Plan's proposal that the USAC CEO will have ultimate authority over all personnel matters, but may delegate to division heads the authority to hire and fire division staff. We find that vesting the hiring and firing authority with the USAC CEO is necessary to ensure accountability and effective administration of USAC. Although we disagree with RHCC, GTE, and US WEST that the division heads rather than the USAC CEO should have authority to hire and fire division staff, we find that permitting the USAC CEO to delegate some hiring and firing decisions to division chiefs provides reasonable flexibility and may be the most efficient course of action in some instances.

H. Selection Process for USAC Board and Chief Executive Officer

24. We adopt the Plan's recommendation that the consolidated USAC Board be selected under the procedures set forth in 47 CFR 69.614 of the Commission's rules. We do not agree with the view expressed by GTE that procedures set forth in 47 CFR 69.614 allow Board appointments to be "influenced by the Commission's individual preferences." Candidates are nominated through a consensus process of particular interest groups and therefore, it is the preference of a particular industry or non-industry group represented on the Board that is reflected through this process, not the Commission's individual preferences. Moreover, our rules provide that Board members will be nominated by the Commission Chairman only if an industry or non-industry group is unable to reach a consensus or fails to submit a nomination. The process we adopt will encourage groups to nominate the most experienced and knowledgeable individuals who can

most effectively represent the interests of that constituency, while also ensuring that the Commission retains a mechanism for appointing Board members when industry or non-industry groups fail to achieve consensus.

25. With regard to Board member terms, section 69.614(e) of the Commission's rules provides that USAC Board members shall serve two-year terms and may be reappointed for subsequent terms pursuant to the nomination and selection process. The Plan, however, proposes that Board members serve staggered three-year terms. We adopt the Plan's proposal and amend our rules accordingly. These measures help ensure continuity on the Board and continuity in the administration of the support mechanisms. Because the merger is scheduled to take place by January 1, 1999, we conclude that Board member terms should commence on January 1 and conclude on December 31, three years after appointment. Consistent with the January 1, 1999 merger date, and to ensure continuity during the initial implementation of the revised administrative structure, we conclude that the terms of six Board members should expire on December 31, 2000, another six on December 31, 2001, and the remaining six on December 31, 2002. Insofar as Board member terms will not begin to expire until December 31, 2000, we believe this responds to the American Library Association's request that we retain the current library representative during the initial phases of reorganization. USAC shall determine when particular Board member terms shall expire. In making this determination, USAC should attempt to maintain continuity on the Board by providing that the first set of Board members whose terms will expire will be representatives of industry and non-industry groups with multiple representatives on the Board.

26. The Plan is silent with regard to the selection process for the USAC CEO. The *July 15 Public Notice*, 63 FR 39549 (July 23, 1998), proposed adopting the procedure that currently applies to the selection of a CEO for SLC and RHCC. Under that procedure, the consolidated USAC Board would submit to the Chairman of the Commission a candidate to serve as the USAC CEO. Bell Atlantic supports this proposal. The Pennsylvania Public Utility Commission supports approval of the USAC CEO by the Chairman of the Commission, but recommends referral to the other commissioners "to ensure greater visibility and accountability." By contrast, BellSouth recommends selection by the USAC Board, subject to

removal for good cause by the Chairman of the Commission. We conclude that the USAC Board should have the primary responsibility for selection of a CEO, and that approval by the Chairman of the Commission ensures appropriate oversight.

I. Compensation Limitations

27. In a recent order regarding funding levels under the schools and libraries mechanism, the Commission concluded that, effective July 1, 1998, the Administrator must, as a condition of its continued service, compensate all officers and employees of SLC and RHCC at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, that does not exceed the rate of basic pay in effect for Level I of the Executive Schedule under 47 U.S.C. 5312. Congress's intent regarding the level of compensation for officers and employees of the revised administrative structure was stated clearly in both section 2005(c) of the Senate bill and the Conference Report. Although few parties commented on the issue of salary limitations, those who addressed the issue support the imposition of such limitations on all officers and employees of the consolidated USAC. The Senate and the House-Senate conferees stated that compensation limitations should be imposed on the officers and employees of the entity to be proposed under section 2005(b)(2) of the Senate bill. Thus, consistent with the will of Congress, we direct the consolidated USAC to compensate all officers and employees under the consolidated USAC at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, that does not exceed the rate of basic pay in effect for Level I of the Executive Schedule under 47 U.S.C. 5312. These compensation limitations shall apply to officers and employees who will administer the schools, libraries, rural health care, high cost, and low income support mechanisms, as well as those responsible for USAC's billing, collection and disbursement functions.

28. We decline at this time to extend the salary limitations to NECA inasmuch as Congress did not direct the imposition of salary limitations on NECA. The commenters that address the issue maintain that it would be inappropriate to apply such limitations. We agree with commenters and do not extend salary limitations to NECA.

III. Administrative Efficiencies Under the Unified Structure

29. Congress has directed the Commission to have a single entity administer the schools and libraries and rural health care support mechanisms. We have reviewed the proposals set forth in the Plan to assess whether, where possible, corporate operations will be consolidated to eliminate duplicative functions. In those instances where the Plan proposes to maintain separate operations, we have evaluated whether such separate operations will further the goal of preserving the distinct missions of the four support mechanisms. We find that the functions that the Plan proposes to consolidate will improve the efficiency and effectiveness with which the universal service support mechanisms are administered. We likewise conclude that the retention of separate operations for certain functions that are unique to a particular support mechanism ensures that the administrative systems and expertise that SLC and RHCC have developed will be preserved in the revised administrative structure. Moreover, because the Plan proposes to consolidate most functions, we believe that this streamlined administrative structure will facilitate the Commission's oversight of universal service administration. Subject to the modifications and clarifications set forth, we adopt the Plan's proposals for consolidating operations. Accordingly, we direct USAC, SLC, and RHCC to enter into a merger agreement that reflects the proposal set forth in the Plan, as modified and clarified herein.

30. The Plan suggests that it may be more efficient to have a consolidated USAC website, but initially proposes to retain the SLC and RHCC websites. The American Library Association questions the prudence of merging the websites at all, in light of SLC's and RHCC's different organizational approaches. We find that the websites should be reorganized and consolidated. Blooston, Mordkofsky, Jackson & Dickens (Blooston) notes that currently there is no consistency as to where information regarding the universal service support mechanisms now may be found. We conclude that a separate USAC website should be created and that the information now found on the SLC and RHCC websites should be merged into the USAC website. We find that a single consolidated USAC website is consistent with our goal of eliminating duplicative functions, and that a consolidated website for all four universal service support mechanisms will be easier to utilize. Accordingly, we

direct USAC to report to the Commission by December 31, 1998 the date by which it could consolidate the website. In the interim, as proposed in the Plan, we direct USAC to provide links among all the relevant websites.

31. We also direct USAC to submit to the Commission for approval, as suggested in the Plan and consistent with the Commission's rules, a proposed method for allocating costs among the four support mechanisms by December 31, 1998. We approve of the Plan's proposal to retain common outside counsel for use by all divisions and committees. Outside counsel shall perform work only as directed by the USAC CEO. USAC may hire additional in-house counsel to perform work on its behalf if USAC determines that doing so would be more cost effective than retaining outside counsel to perform such work.

32. We adopt the Plan's proposal regarding merging the corporations. In implementing the merger, USAC may assume, where appropriate, SLC's and RHCC's contracts with employees and subcontractors. To the extent USAC determines that the rescission or modification of certain contracts will result in efficiencies or other benefits, USAC may rescind or modify such contracts, in accordance with applicable law.

33. The American Library Association contends that it is unclear whether the Plan will improve efficiency or effectiveness. We will review USAC's performance after one year from the merger to assess whether USAC has succeeded in eliminating duplicative functions and whether it has succeeded in preserving the distinct missions of the schools and libraries and rural health care support mechanisms. We also require USAC to submit an annual report by March 31 of each year detailing its activities and accomplishments for the prior year. We will continue to evaluate ways of achieving greater efficiency, effectiveness, and accountability in the administration of universal service.

IV. Procedures for Review of USAC Decisions

34. We agree with commenters that affected parties should have the right to appeal USAC division, committee, and Board decisions directly to the Commission. The majority of commenters opposes requiring affected parties to seek review of USAC division decisions from the appropriate USAC Committee of the Board or the full USAC Board before filing an appeal with the Commission. Commenters generally maintain that direct appeal to

the Commission is necessary to ensure adequate oversight of USAC's operations. Commenters further argue that review by USAC in the first instance would be burdensome and would cause unnecessary delays in obtaining a final decision. We find that Commission oversight will be strengthened by an appeals process that ensures that matters are brought promptly to the Commission. Requiring affected parties to seek review from a Committee of the Board or the full USAC Board in the first instance might cause unnecessary delay in the appeals process without, as MCI notes, any identifiable benefit.

35. We also agree with USAC and SLC that affected parties should be encouraged to bring issues to the attention of the division head or the USAC CEO to determine whether the matter can be handled without a formal appeal to the Commission. We anticipate that, under certain circumstances, a party may prefer to seek redress initially from the appropriate Committee of the Board or the full USAC Board. Accordingly, we conclude that affected parties should have the option of seeking redress from a Committee of the Board or, if the matter concerns a billing, collection, or disbursement matter that falls outside of the jurisdiction of a particular committee, from the full USAC Board. We encourage parties to seek redress in the first instance from Committees of the Board for matters that involve straightforward application of the Commission's rules. To the extent that affected parties can obtain prompt resolution of such disputes, support mechanism participants will be better served and limited Commission resources will be conserved. Although Intermedia recommends excluding USAC internal administrative decisions from the appeal process, we do not believe that any benefits would be realized from limiting the types of decisions that may be appealed to the Commission. We believe that the option of seeking redress from USAC or the Commission addresses BellSouth's concerns regarding the due process guarantees of the APA.

36. As proposed in the *July 15 Public Notice*, we delegate to the Bureau the authority to rule on petitions for review of USAC division, committee, or Board decisions that do not raise novel questions of fact, law, or policy. This delegation to the Bureau is consistent with the Commission's authority under section 5(c) of the Act to delegate particular functions to staff in the first instance, subject to the filing of applications for review with the

Commission. Petitions that raise novel questions of fact, law, or policy shall be brought before the full Commission. As with other decisions made by the Bureau acting pursuant to its delegated authority, parties may seek Commission review of any Bureau decision. The Bureau also would have the authority to review the decisions of USAC at any time on its own motion. Contrary to GTE's claims that Bureau involvement is unnecessary and will result in delay, we believe that granting the Bureau delegated authority to review petitions that do not raise novel questions of fact, law, or policy will facilitate prompt resolution of routine or settled matters.

37. Furthermore, consistent with the Commission's ultimate responsibility over the universal service support mechanisms, we conclude that USAC decisions, whether considered by the Bureau or the Commission, should be subject to *de novo* review. Accordingly, we decline to adopt USAC's and SLC's recommendation that the Commission uphold USAC decisions without considering the merits of the appeal if the Commission finds that USAC has not exceeded its authority and has acted consistently with the Commission's rules.

38. In response to commenters' requests for a streamlined appeals process, we conclude that an affected party will have thirty (30) days to file an appeal of a USAC decision. This thirty (30) day period will begin to run from the date of issuance of a USAC decision. The filing of an appeal to a Committee of the Board or the full Board will toll the time period for filing an appeal with the Commission. For matters that are not new or novel, and may be decided by the Bureau, we further find that we should establish a streamlined process for review. If the Bureau takes no action within ninety (90) days upon an appeal properly before it, USAC's decision will be deemed approved. We are confident that a 90-day period will provide an adequate opportunity for review, in most cases, and the Bureau, within that 90-day period, may take action to extend the period of review. For appeals that are properly before the Commission, a written decision will be issued within 90 days unless the Commission takes action to extend the period for review; under no circumstances will an appeal before the full Commission be deemed approved as a result of inaction on the part of the Commission. We expect that the Bureau and the Commission will act promptly to resolve appeals of USAC decisions. Based on this expectation, we do not adopt BellSouth's suggestion that the

Commission adopt a mechanism similar to the accelerated review process adopted for complaints filed under section 208 of the Act.

39. To facilitate prompt resolution by the Commission of appeals of USAC decisions, we also adopt specific filing requirements for such petitions. The appellant must state specifically its interest in the matter presented for review. The appellant also must provide the Commission with a full statement of relevant, material facts with supporting affidavits and documentation. In addition, the appellant must state concisely the question presented for review, with reference, where appropriate, to the relevant Commission rule, Commission order, or statutory provision. The appellant also must state the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought. If an appellant alleges prohibited conduct by a third party, the appellant shall serve a copy of the appeal on such third party, who shall have an opportunity to file an opposition. Similarly, appellants shall serve on USAC a copy of the appeal of a USAC decision filed with the Commission. We encourage USAC to file comments setting forth USAC's position on the issues raised in the appeal. We believe that USAC's comments may aid the Commission in understanding the nature of the disputed issues and facilitate a timely resolution of the matter. We decline to adopt Weisiger's recommendation that the applications for discounted services provide information regarding beneficiaries' right to seek review of USAC decisions.

40. We note that BellSouth questions whether the Commission has jurisdiction to adjudicate a dispute involving a non-telecommunications carrier. We find that the Commission has the authority to review USAC decisions, regardless of the identity of the parties, because USAC is administering the universal service support mechanisms for the Commission, subject to Commission rules and oversight.

41. We decline to adopt SBC's proposal, supported by GTE, NTCA, and Ameritech, that the appeal procedures should apply to decisions previously rendered by USAC, SLC, and RHCC. Specifically, SBC proposes that affected parties be granted sixty (60) days from the effective date of our rules to appeal prior USAC, SLC, or RHCC decisions. Parties seeking redress from previously issued decisions of USAC, SLC, and RHCC have not been prevented from appealing those decisions to the Commission under existing Commission

procedures. Indeed, several parties have filed appeals with the Commission. Thus, we conclude that retroactive application of these appeal procedures is not warranted.

42. The *July 15 Public Notice* also proposed that, if an application for discounted services or support is approved, and that approval is appealed to the Commission, the pendency of that appeal would not affect the eligibility of the applicant to receive discounted services, nor would it prevent reimbursement of service providers for discounted services provided to such applicants. We conclude that, until the Bureau or the full Commission has resolved an appeal of a USAC decision, an applicant will not be permitted to receive discounted services and service providers will not be permitted to receive reimbursement for discounted services provided to such applicants. We believe that withholding support during the pendency of an appeal will reduce the likelihood that support is disbursed in error. We further find that, because requests for review of USAC decisions that are properly before the Bureau will be deemed approved if the Bureau takes no action within 90 days, and because the full Commission is committed to issuing decisions within 90 days, parties will have limited ability to delay support and discounts for a substantial period of time merely by filing an appeal.

V. Implementation Issues

A. Submission and Approval of Merger Documents

43. Consistent with our adoption of the Plan as modified herein, we direct USAC, SLC, and RHCC to submit draft merger documents to the Commission by December 1, 1998. We also direct USAC to submit to the Commission by December 1, 1998, draft revised by-laws and articles of incorporation. The Commission delegates to the Bureau the authority to review and approve the merger documents, revised by-laws and revised articles of incorporation. Such documents should be consistent with the requirements of this Order and consistent with principles and requirements of Delaware state law. The Bureau will indicate its approval of the documents in a public notice. Upon consummation of the merger and the filing of the revised by-laws, SLC and RHCC shall take all steps necessary to dissolve SLC and RHCC in accordance with Delaware state law.

B. Effective Date of Rules

44. In this Order, the Commission directs that SLC and RHCC merge into

USAC as the single entity responsible for administering the universal service mechanisms by January 1, 1999. To ensure that USAC is able to meet the January 1, 1999 deadline, the Commission directs USAC to submit to the Commission by December 1, 1998 USAC's draft merger documents and draft revised by-laws. Thus, we make this requirement effective December 1, 1998, which may occur within fewer than thirty (30) days after publication in the **Federal Register** of the rules adopted in this Order. In this Order, we also adopt rules that will govern USAC following the required merger. Accordingly, these rules must take effect upon the required consummation of the merger on January 1, 1999, which may occur fewer than thirty (30) days after publication in the **Federal Register** of the rules adopted in this Order. These actions are necessary to ensure completion of the merger by the January 1, 1999 deadline that the Commission proposed in the *Report to Congress* in an effort to respond promptly to Congress's directive that the Commission establish a single entity to administer universal service. In addition, the parties required to take these actions—SLC, RHCC, and USAC—will have actual notice of their obligations when the Commission adopts this Order. Accordingly, we find good cause to depart in the manner described from the general requirement of 5 U.S.C. 553(d) that final rules take effect not less than thirty (30) days after their publication in the **Federal Register**.

VI. Final Regulatory Flexibility Analysis

45. The Regulatory Flexibility Act (RFA) requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." This regulatory flexibility certification supplements our prior certifications and analyses in this proceeding. The Commission will send a copy of this Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, this Order and

certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

46. This Order directs the merger of SLC and RHCC into USAC as the single entity responsible for administering the universal service support mechanisms. In addition, we adopt specific procedures under which administrative decisions made by USAC will be reviewable by the Commission, including the requirements for filing review petitions with the Commission. Pursuant to the RFA, and as described, we certify that these actions will not have a significant economic impact on a substantial number of small entities.

47. Regarding the subject merger, in the *NECA Order*, 62 FR 41294 (August 1, 1997), the Commission directed NECA, as a condition of its service as temporary Administrator of the universal service support mechanisms, to create an independent subsidiary, USAC, to administer temporarily certain aspects of the universal service support mechanisms and to establish SLC and RHCC to administer specific aspects of the universal service mechanisms for schools and libraries and rural health care providers. In that order, the Commission also concluded that NECA is not a small organization within the meaning of the RFA, finding that NECA is a non-profit association that was created to administer the Commission's interstate access tariff and revenue distribution processes. On this basis, the Commission certified pursuant to the RFA that the rules adopted in the *NECA Order* would not have a significant economic impact on a substantial number of small entities.

48. In the *July 15 Public Notice*, the Bureau sought comment on the proposed plan to merge SLC and RHCC into USAC as the single entity responsible for the administration of the universal service support mechanisms for schools and libraries and rural health care providers. For the reasons stated in the *NECA Order*, the Bureau found that NECA is not a small organization within the meaning of the RFA. Similarly, USAC, as a wholly-owned, non-profit subsidiary of NECA, is not a small organization. SLC and RHCC are non-profit corporations created by NECA as a condition of its service as temporary Administrator. The Bureau tentatively certified that, even if NECA, USAC, SLC, and RHCC are small entities, the reorganization of SLC, RHCC, and USAC would affect directly only those four entities and thus would not have a direct, significant economic impact on a substantial number of small

entities. The Bureau requested comment on this matter.

49. Under the rules adopted in this Order, USAC will serve as the single entity responsible for administering all of the universal service support mechanisms as of January 1, 1999. The Commission received no comments requesting that we modify our previous certification that the reorganization of SLC, RHCC, and USAC will not have a significant economic impact on a substantial number of small entities. We hereby certify pursuant to the RFA, 5 U.S.C. 605(b), that the rules adopted in this Order directing the merger of SLC and RHCC into USAC as the permanent Administrator of the universal service support mechanisms will not have a significant economic impact on a substantial number of small entities.

50. Regarding the adoption of specific procedures under which administrative decisions made by USAC will be reviewable by the Commission, we note that, in the Final Regulatory Flexibility Analysis to the *Universal Service Order*, 62 FR 32862 (June 17, 1997), we described and estimated the number of small entities that might be affected significantly by the new universal service rules, including the rule requiring telecommunications carriers and other entities to contribute to the universal service support mechanisms. These entities included telephone companies and similar entities, including wireless entities; cable system operators and similar entities, including DBS and international entities; municipalities; rural health care providers; schools; and libraries. The rules adopted here, which set forth the procedures by which affected parties may seek Commission review of administrative decisions made by USAC, will apply to those same telecommunications carriers and entities. In the *July 15 Public Notice*, the Bureau tentatively certified that the rule amendments under consideration would not have a significant economic impact on a substantial number of small entities, noting that the rules, which would afford entities multiple options in seeking review, would likely have a beneficial impact on such entities. The Bureau requested comment specifically on this tentative conclusion. No such comments were filed.

51. In this Order, the Commission adopts, *inter alia*, procedures under which affected parties may appeal USAC division, committee, and Board decisions directly to the Commission. This decision affords parties options for seeking review of USAC decisions and as a result, the economic effect of such change should, if anything, be

beneficial. In addition, we adopt specific requirements for filing review petitions with the Commission under these rules. We find that the filing requirements we adopt are merely procedural in nature and are no more onerous than other, similar filing requirements in the Commission's rules; as such they will not result in a significant economic impact on entities that choose to file under the rules. We therefore certify that the rules we adopt to afford direct review of USAC decisions by the Commission, including the requirements for filing review petitions with the Commission, will not have a significant economic impact on a substantial number of small entities.

VII. Ordering Clauses

52. Accordingly, it is ordered that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201-205, 218-220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and 47 CFR 1.108, the Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45 is adopted.

53. It is further ordered that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201-205, 218-220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and 47 CFR 1.108, Part 54 of the Commission's rules, 47 CFR Parts 54 and 69, are amended.

54. It is further ordered that, because the Commission has found good cause, this Order and 47 CFR 54.701, as amended, are effective on December 1, 1998, which may be less than thirty (30) days after publication in the **Federal Register**.

55. It is further ordered that the merger of SLC and RHCC into USAC shall be consummated by January 1, 1999.

56. It is further ordered that, because the Commission has found good cause, except as otherwise provided herein, the rule changes set forth are effective on January 1, 1999, which may be less than thirty (30) days after publication in the **Federal Register**.

57. It is further ordered that, upon consummation of the merger of SLC and RHCC into USAC, SLC and RHCC shall be dissolved, in accordance with applicable state law.

58. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

59. It is further ordered that the information collections contained in 47 CFR 54.703(c) and 54.721 of the Commission's rules, will become effective following approval from the Office of Management and Budget.

List of Subjects

47 CFR Part 54

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

Parts 54 and 69 of Title 47 of the Code of Federal Regulations are amended to read as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. In § 54.5 remove the terms *High Cost and Low Income Committee*, *Rural Health Care Corporation*, and *Schools and Libraries Corporation* and the definitions of those terms; revise the definition of the term *Administrator*; add the definition of the term *website* in alphabetical order as follows:

§ 54.5 Terms and definitions.

* * * * *

Administrator. The term "Administrator" shall refer to the Universal Service Administrative Company that is an independent subsidiary of the National Exchange Carrier Association, Inc., and that has been appointed the permanent Administrator of the federal universal service support mechanisms.

* * * * *

Website. The term "website" shall refer to any websites operated by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high cost

mechanism, and the low income mechanism.

3. In § 54.504 remove the words "Schools and Libraries Corporation" in paragraphs (b)(1), (b)(2)(vii), (b)(3), and (c) and add, in its place, the word "Administrator", and revise paragraph (b)(4) to read as follows:

§ 54.504 Requests for services.

* * * * *

(b) * * *

(4) After posting on the Administrator's website an eligible school's, library's, or consortium's FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. That entity shall then wait at least four weeks from the date on which its description of services is posted on the Administrator's website before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

* * * * *

§ 54.505 [Amended]

4. In § 54.505 remove the words "Schools and Libraries Corporation" in paragraphs (b)(3) and (c) and add, in its place, the word "Administrator."

5. In § 54.507 remove the words "Schools and Libraries Corporation" in paragraphs (e) through (f), the introductory text to (g), (g)(1) and add, in its place, the word "Administrator", and revise paragraphs (c), (g)(2)(i) and (g)(2)(iv) to read as follows:

§ 54.507 Cap.

* * * * *

(c) *Requests.* Funds shall be available to fund discounts for eligible schools and libraries and consortia of such eligible entities on a first-come-first-served basis, with requests accepted beginning on the first of July prior to each funding year. The Administrator shall maintain on the Administrator's website a running tally of the funds already committed for the existing funding year. The Administrator shall implement an initial filing period that treats all schools and libraries filing within that period as if their applications were simultaneously received. The initial filing period shall begin on the date that the Administrator begins to receive applications for support, and shall conclude on a date to be determined by the Administrator. The Administrator may implement such additional filing periods as it deems necessary.

* * * * *

(g) * * *

(2) * * *

(i) The Administrator or the Administrator's subcontractor shall post a message on the Administrator's website, notify the Commission, and take reasonable steps to notify the educational and library communities that commitments for the remaining \$250 million of support will only be made to the most economically disadvantaged schools and libraries (those in the two most disadvantaged categories) for the next 30 days or the remainder of the funding year, whichever is shorter.

* * * * *

(iv) After all requests submitted by schools and libraries described in paragraphs (g)(2) and (g)(3) of this section during the 30-day period have been met, the Administrator shall allocate the remaining available funds to all other eligible schools and libraries in the order in which their requests have been received by the Administrator, until the \$250 million is exhausted or the funding year ends.

* * * * *

6. In § 54.509 remove the words "Schools and Libraries Corporation" in paragraph (b) and add, in its place, the word "Administrator" and revise paragraph (c) to read as follows:

§ 54.509 Adjustments to the discount matrix.

* * * * *

(c) *Remaining funds.* If funds remain under the cap at the end of the funding year in which discounts have been reduced below those set in the matrices, the Administrator shall consult with the Commission to establish the best way to distribute those funds.

§ 54.511 [Amended]

7. In § 54.511 remove the words "Schools and Libraries Corporation" in paragraph (c)(3) and add, in its place, the word "Administrator."

§ 54.516 [Amended]

8. In § 54.516 remove the words "Schools and Libraries Corporation" in paragraph (b) and add, in its place, the word "Administrator."

§ 54.603 [Amended]

9. In § 54.603 remove the words "Rural Health Care Corporation" in paragraphs (a)(1) through (5) and add, in its place, the word "Administrator."

§ 54.604 [Amended]

10. In § 54.604 remove the words "Rural Health Care Corporation" in paragraph (c) and add, in its place, the word "Administrator."

§ 54.605 [Amended]

11. In § 54.605 remove the words "Rural Health Care Corporation" in paragraph (e) and add, in its place, the word "Administrator."

§ 54.609 [Amended]

12. In § 54.609 remove the words "Rural Health Care Corporation" in paragraph (b) and add, in its place, the word "Administrator."

§ 54.619 [Amended]

13. In § 54.619 remove the words "Rural Health Care Corporation" in paragraphs (b) and (d) and add, in its place, the word "Administrator."

§ 54.623 [Amended]

14. In § 54.623 remove the words "Rural Health Care Corporation" in paragraphs (c), (e) through (f) and add, in its place, the word "Administrator."

§ 54.625 [Amended]

15. In § 54.625 remove the words "Rural Health Care Corporation" in paragraph (a) and add, in its place, the word "Administrator."

16. Revise § 54.701 to read as follows:

§ 54.701 Administrator of universal service support mechanisms.

(a) The Universal Service Administrative Company is appointed the permanent Administrator of the federal universal service support mechanisms, subject to a review after one year by the Federal Communications Commission to determine that the Administrator is administering the universal service support mechanisms in an efficient, effective, and competitively neutral manner.

(b) The Schools and Libraries Corporation and the Rural Health Care Corporation shall merge into the Universal Service Administrative Company by January 1, 1999; provided, however, that the merger shall not take place until the Common Carrier Bureau, acting pursuant to delegated authority, has approved the merger documents, the amended by-laws, and the amended articles of incorporation, as set forth in paragraphs (c) and (d) of this section.

(c) By December 1, 1998, the Schools and Libraries Corporation, the Rural Health Care Corporation and the Universal Service Administrative Company shall file with the Federal Communications Commission draft copies of all documents necessary to effectuate the merger.

(d) By December 1, 1998, the Universal Service Administrative Company shall file with the Federal Communications Commission draft

copies of amended by-laws and amended articles of incorporation.

(e) Upon consummation of the merger of the Schools and Libraries Corporation and the Rural Health Care Corporation into the Universal Service Administrative Company, the Schools and Libraries Corporation and the Rural Health Care Corporation shall take all steps necessary to dissolve such corporations.

(f) The Administrator shall establish a nineteen (19) member Board of Directors, as set forth in § 54.703. The Administrator's Board of Directors shall establish three Committees of the Board of Directors, as set forth in § 54.705: (1) the Schools and Libraries Committee, which shall oversee the schools and libraries support mechanism; (2) the Rural Health Care Committee, which shall oversee the rural health care support mechanism; and (3) the High Cost and Low Income Committee, which shall oversee the high cost and low income support mechanism. The Board of Directors shall not modify substantially the power or authority of the Committees of the Board without prior approval from the Federal Communications Commission.

(g) The Administrator shall establish three divisions: (1) the Schools and Libraries Division, which shall perform duties and functions in connection with the schools and libraries support mechanism under the direction of the Schools and Libraries Committee of the Board, as set forth in § 54.705(a); (2) the Rural Health Care Division, which shall perform duties and functions in connection with the rural health care support mechanism under the direction of the Rural Health Care Committee of the Board, as set forth in § 54.705(b); and (3) the High Cost and Low Income Division, which shall perform duties and functions in connection with the high cost and low income support mechanism under the direction of the High Cost and Low Income Committee of the Board, as set forth in § 54.705(c). As directed by the Committees of the Board set forth in § 54.705, these divisions shall perform the duties and functions unique to their respective support mechanisms.

(h) The Administrator shall be managed by a Chief Executive Officer, as set forth in § 54.704. The Chief Executive Officer shall serve on the Committees of the Board established in § 54.705.

17. Add a new § 54.702 to read as follows:

§ 54.702 Administrator's functions and responsibilities.

(a) The Administrator, and the divisions therein, shall be responsible for administering the schools and libraries support mechanism, the rural health care support mechanism, the high cost support mechanism and the low income support mechanism.

(b) The Administrator shall be responsible for billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.

(c) The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.

(d) The Administrator may advocate positions before the Commission and its staff only on administrative matters relating to the universal service support mechanisms.

(e) The Administrator shall maintain books of account separate from those of the National Exchange Carrier Association, of which the Administrator is an independent subsidiary. The Administrator's books of account shall be maintained in accordance with generally accepted accounting principles. The Administrator may borrow start up funds from the National Exchange Carrier Association. Such funds may not be drawn from the Telecommunications Relay Services (TRS) fund or TRS administrative expense accounts.

(f) Pursuant to its responsibility for billing and collecting contributions, the Administrator shall compare periodically information collected by the administrator of the TRS Fund from TRS Fund Worksheets with information submitted by contributors on Universal Service Worksheets to verify the accuracy of information submitted on Universal Service Worksheets. When performing a comparison of contributor information as provided by this paragraph, the Administrator must undertake company-by-company comparisons for all entities filing Universal Service and TRS Fund Worksheets.

(g) The Administrator shall create and maintain a website, as defined in § 54.5, on which applications for services will be posted on behalf of schools, libraries and rural health care providers.

(h) The Administrator shall file with the Commission and Congress an annual report by March 31 of each year. The report shall detail the Administrator's

operations, activities, and accomplishments for the prior year, including information about participation in each of the universal service support mechanisms and administrative action intended to prevent waste, fraud, and abuse. The report also shall include an assessment of subcontractors' performance, and an itemization of monthly administrative costs that shall include all expenses, receipts, and payments associated with the administration of the universal service support programs. The Administrator shall consult each year with Commission staff to determine the scope and content of the annual report.

(i) The Administrator shall report quarterly to the Commission on the disbursement of universal service support program funds. The Administrator shall keep separate accounts for the amounts of money collected and disbursed for eligible schools and libraries, rural health care providers, low-income consumers, and high cost and insular areas.

(j) Information based on the Administrator's reports will be made public by the Commission at least once a year as part of a Monitoring Report.

(k) The Administrator shall provide the Commission full access to the data collected pursuant to the administration of the universal service support programs.

(l) Pursuant to § 64.903 of this chapter, the Administrator shall file with the Commission a cost allocation manual (CAM) that describes the accounts and procedures the Administrator will use to allocate the shared costs of administering the universal service support mechanisms and its other operations.

(m) The Administrator shall make available to whomever the Commission directs, free of charge, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from its role in administering the support mechanisms, if its participation in administering the universal service support mechanisms ends.

(n) If its participation in administering the universal service support mechanisms ends, the Administrator shall be subject to close-out audits at the end of its term.

18. Revise § 54.703 to read as follows:

§ 54.703 The Administrator's Board of Directors.

(a) The Administrator shall have a Board of Directors separate from the Board of Directors of the National Exchange Carrier Association. The National Exchange Carrier Association's

Board of Directors shall be prohibited from participating in the functions of the Administrator.

(b) *Board composition.* The independent subsidiary's Board of Directors shall consist of nineteen (19) directors:

(1) Three directors shall represent incumbent local exchange carriers, with one director representing the Bell Operating Companies and GTE, one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues in excess of \$40 million, and one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues of \$40 million or less;

(2) Two directors shall represent interexchange carriers, with one director representing interexchange carriers with more than \$3 billion in annual operating revenues and one director representing interexchange carriers with annual operating revenues of \$3 billion or less;

(3) One director shall represent commercial mobile radio service (CMRS) providers;

(4) One director shall represent competitive local exchange carriers;

(5) One director shall represent cable operators;

(6) One director shall represent information service providers;

(7) Three directors shall represent schools that are eligible to receive discounts pursuant to § 54.501;

(8) One director shall represent libraries that are eligible to receive discounts pursuant to § 54.501;

(9) Two directors shall represent rural health care providers that are eligible to receive supported services pursuant to § 54.601;

(10) One director shall represent low-income consumers;

(11) One director shall represent state telecommunications regulators;

(12) One director shall represent state consumer advocates; and

(13) The Chief Executive Officer of the Administrator.

(c) *Selection process for board of directors.* (1) Sixty (60) days prior to the expiration of a director's term, the industry or non-industry group that is represented by such director on the Administrator's Board of Directors, as specified in paragraph (b) of this section, shall nominate by consensus a new director. The industry or non-industry group shall submit the name of its nominee for a seat on the Administrator's Board of Directors, along with relevant professional and biographical information about the nominee, to the Chairman of the Federal Communications Commission. Only

members of the industry or non-industry group that a Board member will represent may submit a nomination for that position.

(2) The name of an industry or non-industry group's nominee shall be filed with the Office of the Secretary of the Federal Communications Commission in accordance with part 1 of this chapter. The document nominating a candidate shall be captioned "In the matter of: Nomination for Universal Service Administrator's Board of Directors" and shall reference FCC Docket Nos. 97-21 and 96-45. Each nomination shall specify the position on the Board of Directors for which such nomination is submitted. Two copies of the document nominating a candidate shall be submitted to the Common Carrier Bureau's Accounting Policy Division.

(3) The Chairman of the Federal Communications Commission shall review the nominations submitted by industry and non-industry groups and select each director of the Administrator's Board of Directors, as each director's term expires pursuant to paragraph (d) of this section. If an industry or non-industry group does not reach consensus on a nominee or fails to submit a nomination for a position on the Administrator's Board of Directors, the Chairman of the Federal Communications Commission shall select an individual to represent such group on the Administrator's Board of Directors.

(d) *Board member terms.* The directors on the Administrator's Board shall be appointed for three-year terms, except that the Chief Executive Officer shall be a permanent member of the Board. Board member terms shall run from January 1 of the first year of the term to December 31 of the third year of the term, except that, for purposes of the term beginning on January 1, 1999, the terms of six directors shall expire on December 31, 2000, the terms of another six directors on December 31, 2001, and the terms of the remaining six directors on December 31, 2002. Directors may be reappointed for subsequent terms pursuant to the initial nomination and appointment process described in paragraph (c) of this section. If a Board member vacates his or her seat prior to the completion of his or her term, the Administrator will notify the Common Carrier Bureau of such vacancy, and a successor will be chosen pursuant to the nomination and appointment process described in paragraph (c) of this section.

(e) All meetings of the Administrator's Board of Directors shall be open to the public and held in Washington, D.C.

(f) Each member of the Administrator's Board of Directors shall be entitled to receive reimbursement for expenses directly incurred as a result of his or her participation on the Administrator's Board of Directors.

19. Add a new § 54.704 to read as follows:

§ 54.704 The Administrator's Chief Executive Officer.

(a) *Chief Executive Officer's functions.*

(1) The Chief Executive Officer shall have management responsibility for the administration of the federal universal service support mechanisms.

(2) The Chief Executive Officer shall have management responsibility for all employees of the Universal Service Administrative Company. The Chief Executive Officer may delegate such responsibility to heads of the divisions established in § 54.701(g).

(3) The Chief Executive Officer shall serve on the Administrator's Board of Directors as set forth in § 54.703(b) and on the Committees of the Board established under § 54.705.

(b) *Selection process for the Chief Executive Officer.* (1) The members of the Board of Directors of the Administrator shall nominate by consensus a Chief Executive Officer. The Board of Directors shall submit the name of its nominee for Chief Executive Officer, along with relevant professional and biographical information about the nominee, to the Chairman of the Federal Communications Commission.

(2) The Chairman of the Federal Communications Commission shall review the nomination submitted by the Administrator's Board of Directors. Subject to the Chairman's approval, the nominee shall be appointed as the Administrator's Chief Executive Officer.

(3) If the Board of Directors does not reach consensus on a nominee or fails to submit a nomination for the Chief Executive Officer, the Chairman of the Federal Communications Commission shall select a Chief Executive Officer.

20. Revise § 54.705 to read as follows:

§ 54.705 Committees of the Administrator's Board of Directors.

(a) *Schools and Libraries Committee.*—(1) *Committee functions.* The Schools and Libraries Committee shall oversee the administration of the schools and libraries support mechanism by the Schools and Libraries Division. The Schools and Libraries Committee shall have the authority to make decisions concerning:

(i) How the Administrator projects demand for the schools and libraries support mechanism;

(ii) Development of applications and associated instructions as needed for the

schools and libraries support mechanism;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Performance of outreach and education functions;

(v) Review of bills for services that are submitted by schools and libraries;

(vi) Monitoring demand for the purpose of determining when the \$2 billion trigger has been reached;

(vii) Implementation of the rules of priority in accordance with § 54.507(g) of this chapter;

(viii) Review and certification of technology plans when a state agency has indicated that it will not be able to review such plans within a reasonable time;

(ix) The classification of schools and libraries as urban or rural and the use of the discount matrix established in § 54.505(c) of this chapter to set the discount rate to be applied to services purchased by eligible schools and libraries;

(x) Performance of audits of beneficiaries under the schools and libraries support mechanism; and

(xi) Development and implementation of other functions unique to the schools and libraries support mechanism.

(2) *Committee composition.* The Schools and Libraries Committee shall consist of the following members of the Administrator's Board of Directors:

(i) Three school representatives;

(ii) One library representative;

(iii) One service provider representative;

(iv) One at-large representative elected by the Administrator's Board of Directors; and

(v) The Administrator's Chief Executive Officer.

(b) *Rural Health Care Committee.*—(1) *Committee functions.* The Rural Health Care Committee shall oversee the administration of the rural health care support mechanism by the Rural Health Care Division. The Rural Health Care Committee shall have authority to make decisions concerning:

(i) How the Administrator projects demand for the rural health care support mechanism;

(ii) Development of applications and associated instructions as needed for the rural health care support mechanism;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Calculation of support levels under § 54.609;

(v) Performance of outreach and education functions;

(vi) Review of bills for services that are submitted by rural health care providers;

(vii) Monitoring demand for the purpose of determining when the \$400 million cap has been reached;

(viii) Performance of audits of beneficiaries under the rural health care support mechanism; and

(ix) Development and implementation of other functions unique to the rural health care support mechanism.

(2) *Committee composition.* The Rural Health Care Committee shall consist of the following members of the Administrator's Board of Directors:

(i) Two rural health care representatives;

(ii) One service provider representative;

(iii) Two at-large representatives elected by the Administrator's Board of Directors;

(iv) One State telecommunications regulator, one state consumer advocate; and

(v) The Administrator's Chief Executive Officer.

(c) *High Cost and Low Income Committee.*—(1) *Committee functions.*

The High Cost and Low Income Committee shall oversee the administration of the high cost and low income support mechanisms by the High Cost and Low Income Division. The High Cost and Low Income Committee shall have the authority to make decisions concerning:

(i) How the Administrator projects demand for the high cost and low income support mechanisms;

(ii) Development of applications and associated instructions as needed for the high cost and low income support mechanisms;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Performance of audits of beneficiaries under the high cost and low income support mechanisms; and

(v) Development and implementation of other functions unique to the high cost and low income support mechanisms.

(2) *Committee composition.* The High Cost and Low Income Committee shall consist of the following members of the Administrator's Board of Directors:

(i) One low income representative;

(ii) One state telecommunications regulator;

(iii) One state consumer advocate;

(iv) Two incumbent local exchange carrier representatives (one shall

represent rural telephone companies, as that term is defined in 47 U.S.C. 153(37) and one shall represent non-rural telephone companies);

(v) One interexchange carrier representative;

(vi) One competing local exchange carrier representative;

(vii) One commercial mobile radio service representative; and

(viii) The Administrator's Chief Executive Officer.

(d) *Binding Authority of Committees of the Board.*

(1) Any action taken by the Committees of the Board established in paragraphs (a) through (c) of this section shall be binding on the Board of Directors of the Administrator, unless such action is presented for review to the Board by the Administrator's Chief Executive Officer and the Board disapproves of such action by a two-thirds vote of a quorum of directors, as defined in the Administrator's by-laws.

(2) The budgets prepared by each Committee shall be subject to Board review as part of the Administrator's combined budget. The Board shall not modify the budgets prepared by the Committees of the Board unless such modification is approved by a two-thirds vote of a quorum of the Board, as defined in the Administrator's by-laws.

21. Add a new § 54.706 to read as follows:

§ 54.706 Contributions.

(a) Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support programs. Interstate telecommunications include, but are not limited to:

(1) Cellular telephone and paging services;

(2) Mobile radio services;

(3) Operator services;

(4) Personal communications services (PCS);

(5) Access to interexchange service;

(6) Special access service;

(7) WATS;

(8) Toll-free service;

(9) 900 service;

(10) Message telephone service (MTS);

(11) Private line service;

(12) Telex;

(13) Telegraph;

(14) Video services;

(15) Satellite service;

(16) Resale of interstate services; and

(17) Payphone services.

(b) Every telecommunications carrier that provides interstate

telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators shall contribute to the programs for eligible schools, libraries, and health care providers on the basis of its interstate, intrastate, and international end-user telecommunications revenues. Entities providing open video systems (OVS), cable leased access, or direct broadcast satellite (DBS) services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute to universal service: non-profit schools, non-profit colleges, non-profit universities, non-profit libraries, and non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.

(c) Every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators shall contribute to the programs for high cost, rural and insular areas, and low-income consumers on the basis of its interstate and international end-user telecommunications revenues. Entities providing OVS, cable leased access, or DBS services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute to universal service: non-profit schools, non-profit colleges, non-profit universities, non-profit libraries, and non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.

22. Add a new § 54.708 to read as follows:

§ 54.708 De minimis exemption.

If a contributor's contribution to universal service in any given year is less than \$10,000, that contributor will not be required to submit a contribution or Universal Service Worksheet for that year. If a contributor improperly claims exemption from the contribution requirement, it will be subject to the criminal provisions of sections 220(d) and (e) of the Act regarding willful false submissions and will be required to pay the amounts withheld plus interest.

23. In § 54.709 remove the words "Administrator's, the Schools and

Libraries Corporation's, and the Rural Health Care Corporation's" from paragraph (a)(2) and add, in its place, the word "Administrator's"; revise paragraph (a)(3) to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

* * * * *

(3) Total projected expenses for universal service support programs for each quarter must be approved by the Commission before they are used to calculate the quarterly contribution factors and individual contributions. For each quarter, the Administrator must submit its projections of demand for the high cost and low-income support mechanisms, the schools and libraries support mechanism, and the rural health care support mechanism, respectively, and the basis for those projections, to the Commission and the Common Carrier Bureau at least sixty (60) calendar days prior to the start of that quarter. For each quarter, the Administrator must submit its projections of administrative expenses for the high cost and low-income programs, the schools and libraries program and the rural health care program and the basis for those projections to the Commission and the Common Carrier Bureau at least sixty (60) calendar days prior to the start of that quarter. Based on data submitted to the Administrator on the Universal Service Worksheets, the Administrator must submit the total contribution bases to the Common Carrier Bureau at least sixty (60) days before the start of each quarter. The projections of demand and administrative expenses and the contribution factors shall be announced by the Commission in a public notice and shall be made available on the Commission's website. The Commission reserves the right to set projections of demand and administrative expenses at amounts that the Commission determines will serve the public interest at any time within the fourteen-day period following release of the Commission's public notice. If the Commission takes no action within fourteen (14) days of the date of release of the public notice announcing the projections of demand and administrative expenses, the projections of demand and administrative expenses, and contribution factors shall be deemed approved by the Commission. Once the projections and contribution factors are approved, the Administrator shall apply the quarterly contribution factors to determine individual contributions.

* * * * *

§ 54.711 [Amended]

24. In § 54.711 remove the words "Administrator, Rural Health Care Corporation and Schools and Libraries Corporation" from paragraph (b) and add, in its place, the word "Administrator."

25. Revise § 54.715 to read as follows:

§ 54.715 Administrative expenses of the Administrator.

(a) The annual administrative expenses of the Administrator should be commensurate with the administrative expenses of programs of similar size, with the exception of the salary levels for officers and employees of the Administrator described in paragraph (b) of this section. The annual administrative expenses may include, but are not limited to, salaries of officers and operations personnel, the costs of borrowing funds, equipment costs, operating expenses, directors' expenses, and costs associated with auditing contributors of support recipients.

(b) All officers and employees of the Administrator may be compensated at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, in an amount not to exceed the rate of basic pay in effect for Level I of the Executive Schedule under 5 U.S.C. 5312.

(c) The Administrator shall submit to the Commission projected quarterly budgets at least sixty (60) days prior to the start of every quarter. The Commission must approve the projected quarterly budgets before the Administrator disburses funds under the federal universal service support mechanisms. The administrative expenses incurred by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high cost support mechanism and the low income support mechanism shall be deducted from the annual funding of each respective support mechanism. The expenses deducted from the annual funding for each support mechanism also shall include the Administrator's joint and common costs allocated to each support mechanism pursuant to the cost allocation manual filed by the Administrator under § 64.903 of this chapter.

26. Add a new § 54.717 to read as follows:

§ 54.717 Audits of the Administrator.

The Administrator shall obtain and pay for an annual audit conducted by an independent auditor to examine its operations and books of account to determine, among other things, whether the Administrator is properly

administering the universal service support mechanisms to prevent fraud, waste, and abuse:

(a) Before selecting an independent auditor, the Administrator shall submit preliminary audit requirements, including the proposed scope of the audit and the extent of compliance and substantive testing, to the Common Carrier Bureau Audit Staff.

(b) The Common Carrier Bureau Audit Staff shall review the preliminary audit requirements to determine whether they are adequate to meet the audit objectives. The Common Carrier Bureau Audit Staff shall prescribe modifications that shall be incorporated into the final audit requirements.

(c) After the audit requirements have been approved by the Common Carrier Bureau Audit Staff, the Administrator shall engage within thirty (30) calendar days an independent auditor to conduct the annual audit required by this paragraph. In making its selection, the Administrator shall not engage any independent auditor who has been involved in designing any of the accounting or reporting systems under review in the audit.

(d) The independent auditor selected by the Administrator to conduct the annual audit shall be instructed by the Administrator to develop a detailed audit program based on the final audit requirements and shall be instructed by the Administrator to submit the audit program to the Common Carrier Bureau Audit Staff. The Common Carrier Bureau Audit Staff shall review the audit program and make modifications, as needed, that shall be incorporated into the final audit program. During the course of the audit, the Common Carrier Bureau Audit Staff may direct the Administrator to direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements.

(e) During the course of the audit, the Administrator shall instruct the independent auditor to:

(1) Inform the Common Carrier Bureau Audit Staff of any revisions to the final audit program or to the scope of the audit;

(2) Notify the Common Carrier Bureau Audit Staff of any meetings with the Administrator in which audit findings are discussed; and

(3) Submit to the Chief of the Common Carrier Bureau any accounting or rule interpretations necessary to complete the audit.

(f) Within sixty (60) calendar days after the end of the audit period, but prior to discussing the audit findings with the Administrator, the independent auditor shall be instructed

by the Administrator to submit a draft of the audit report to the Common Carrier Bureau Audit Staff.

(g) The Common Carrier Bureau Audit Staff shall review the audit findings and audit workpapers and offer its recommendations concerning the conduct of the audit or the audit findings to the independent auditor. Exceptions of the Common Carrier Bureau Audit Staff to the findings and conclusions of the independent auditor that remain unresolved shall be included in the final audit report.

(h) Within fifteen (15) calendar days after receiving the Common Carrier Bureau Audit Staff's recommendations and making any revisions to the audit report, the Administrator shall instruct the independent auditor to submit the audit report to the Administrator for its response to the audit findings. At this time the auditor also must send copies of its audit findings to the Common Carrier Bureau Audit Staff. The Administrator shall provide the independent auditor time to perform additional audit work recommended by the Common Carrier Bureau Audit Staff.

(i) Within thirty (30) calendar days after receiving the audit report, the Administrator shall respond to the audit findings and send copies of its response to the Common Carrier Bureau Audit Staff. The Administrator shall instruct the independent auditor that any reply that the independent auditor wishes to make to the Administrator's responses shall be sent to the Common Carrier Bureau Audit Staff as well as the Administrator. The Administrator's response and the independent auditor's replies shall be included in the final audit report;

(j) Within ten (10) calendar days after receiving the response of the Administrator, the independent auditor shall file with the Commission the final audit report.

(k) Based on the final audit report, the Chief of the Common Carrier Bureau may take any action necessary to ensure that the universal service support mechanisms operate in a manner consistent with the requirements of this Part, as well as such other action as is deemed necessary and in the public interest.

27. Add a subpart I to part 54 of title 47 of the Code of Federal Regulations as follows:

Subpart I—Review of Decisions Issued by the Administrator

54.719 Parties permitted to seek review of Administrator decisions.

54.720 Filing deadlines.

54.721 General filing requirements.

54.722 Review by the Common Carrier Bureau or the Commission.

54.723 Standard of review.

54.724 Time periods for Commission approval of Administrator decisions.

54.725 Universal service disbursement during pendency of a request for review of an Administrator decision.

28. Add a new § 54.719 to read as follows:

§ 54.719 Parties permitted to seek review of Administrator decisions.

(a) Any person aggrieved by an action taken by a division of the Administrator, as defined in § 54.701(g), may seek review from the appropriate Committee of the Board, as defined in § 54.705.

(b) Any person aggrieved by an action taken by the Administrator pertaining to a billing, collection or disbursement matter that falls outside the jurisdiction of the Committees of the Board may seek review from the Board of Directors of the Administrator, as defined in § 54.703.

(c) Any person aggrieved by an action taken by a division of the Administrator, as defined in § 54.701(g), a Committee of the Board of the Administrator, as defined in § 54.705, or the Board of Directors of the Administrator, as defined in § 54.703, may seek review from the Federal Communications Commission, as set forth in § 54.722.

29. Add a new § 54.720 to read as follows:

§ 54.720 Filing deadlines.

(a) An affected party requesting review of an Administrator decision by the Commission pursuant to § 54.719(c), shall file such request within thirty (30) days of the issuance of the decision by a division or Committee of the Board of the Administrator.

(b) An affected party requesting review of a division decision by a Committee of the Board pursuant to § 54.719(a), shall file such request within thirty (30) days of issuance of the decision by the division.

(c) An affected party requesting review by the Board of Directors pursuant to § 54.719(b) regarding a billing, collection, or disbursement matter that falls outside the jurisdiction of the Committees of the Board shall file such request within thirty (30) days of issuance of the Administrator's decision.

(d) The filing of a request for review with a Committee of the Board under § 54.719(a) or with the full Board under § 54.703, shall toll the time period for seeking review from the Federal Communications Commission. Where the time for filing an appeal has been tolled, the party that filed the request for review from a Committee of the Board

or the full Board shall have thirty (30) days from the date the Committee or the Board issues a decision to file an appeal with the Commission.

(e) Parties shall adhere to the time periods for filing oppositions and replies set forth in 47 CFR 1.45.

30. Add a new § 54.721 to read as follows:

§ 54.721 General filing requirements.

(a) Except as otherwise provided herein, a request for review of an Administrator decision by the Federal Communications Commission shall be filed with the Federal Communications Commission's Office of the Secretary in accordance with the general requirements set forth in part 1 of this chapter. The request for review shall be captioned "In the matter of: Request for Review by (name of party seeking review) of Decision of Universal Service Administrator" and shall reference FCC Docket Nos. 97-21 and 96-45.

(b) A request for review pursuant to § 54.719(a) through (c) shall contain: (1) a statement setting forth the party's interest in the matter presented for review; (2) a full statement of relevant, material facts with supporting affidavits and documentation; (3) the question presented for review, with reference, where appropriate, to the relevant Federal Communications Commission rule, Commission order, or statutory provision; (4) a statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought.

(c) A copy of a request for review that is submitted to the Federal Communications Commission shall be served on the Administrator consistent with the requirement for service of documents set forth in § 1.47 of this chapter.

(d) If a request for review filed pursuant to § 54.720(a) through (c) alleges prohibitive conduct on the part of a third party, such request for review shall be served on the third party consistent with the requirement for service of documents set forth in § 1.47 of this chapter. The third party may file a response to the request for review. Any response filed by the third party

shall adhere to the time period for filing replies set forth in § 1.45 of this chapter and the requirement for service of documents set forth in § 1.47 of this chapter.

31. Add a new § 54.722 to read as follows:

§ 54.722 Review by the Common Carrier Bureau or the Commission.

(a) Requests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Common Carrier; provided, however, that requests for review that raise novel questions of fact, law or policy shall be considered by the full Commission.

(b) An affected party may seek review of a decision issued under delegated authority by the Common Carrier Bureau pursuant to the rules set forth in part 1 of this chapter.

32. Add a new § 54.723 to read as follows:

§ 54.723 Standard of review.

(a) The Common Carrier Bureau shall conduct *de novo* review of requests for review of decisions issued by the Administrator.

(b) The Federal Communications Commission shall conduct *de novo* review of requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct *de novo* review of decisions issued by the Common Carrier Bureau under delegated authority.

33. Add a new § 54.724 to read as follows:

§ 54.724 Time periods for Commission approval of Administrator decisions.

(a) If the Common Carrier Bureau does not take action within ninety (90) days upon appeals that are properly before it, a decision issued by the Administrator shall be deemed approved; provided, however, that within the 90-day period, the Common Carrier Bureau may extend the time period for taking action on a request for review of an Administrator decision.

(b) The Commission shall issue a written decision in response to a request for review of an Administrator decision that involves novel questions of fact, law or policy within ninety (90) days; provided, however, that the Commission may extend the time period for taking action on the request for review.

34. Add a new § 74.725 to read as follows:

§ 74.725 Universal service disbursements during pendency of a request for review of an Administrator decision.

(a) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the schools and libraries support mechanism or the rural health care support mechanism, the Administrator shall not reimburse a service provider for the provision of discounted services until a final decision has been issued either by the Administrator or by the Federal Communications Commission.

(b) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the high cost and low income support mechanisms, the Administrator shall not disburse support to a service provider until a final decision has been issued either by the Administrator or by the Federal Communications Commission.

PART 69—ACCESS CHARGES

35. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

§ 69.600 [Removed]

36. Remove § 69.600.

§ 69.603 [Amended]

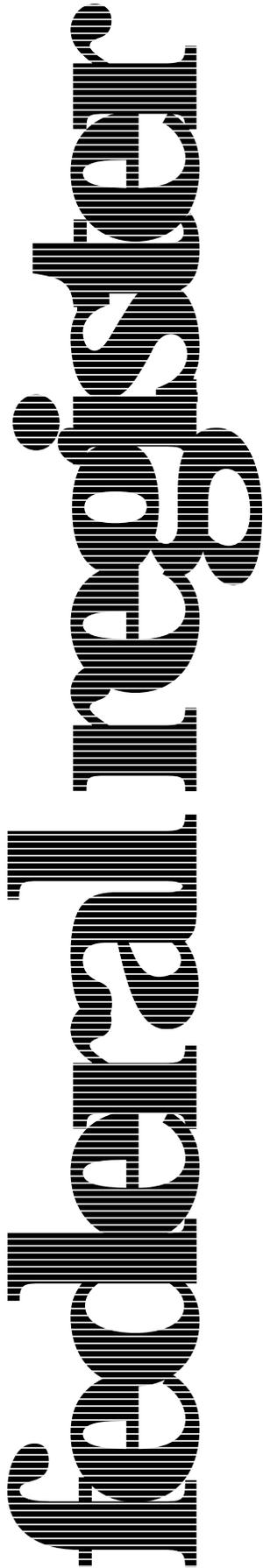
37. In § 69.603 remove paragraphs (c), (d), and (e).

§§ 69.613 through 69.622 [Removed]

38. Remove §§ 69.613 through 69.622.

[FR Doc. 98-33549 Filed 12-18-98; 8:45 am]

BILLING CODE 6712-01-P



Monday
December 21, 1998

Part V

**Department of the
Interior**

**Office of Surface Mining Reclamation and
Enforcement**

**30 CFR Part 701, et al.
Application and Permit Information
Requirements; Permit Eligibility;
Definitions of Ownership and Control; the
Applicant/Violator System; Alternative
Enforcement Actions; Proposed Rule**

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 724, 773, 774, 778, 842, 843, and 846

RIN 1029-AB94

Application and Permit Information Requirements; Permit Eligibility; Definitions of Ownership and Control; the Applicant/Violator System; Alternative Enforcement Actions

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

SUMMARY: We are proposing revised permit eligibility requirements for surface coal mining operations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). In particular, we propose to revise how ownership and control of mining operations is determined under section 510(c) of the Act so that applicants who are responsible for unabated violations do not receive new permits. We have designed this proposal to be effective, fair, and consistent with a 1997 decision by the U.S. Court of Appeals for the D.C. Circuit addressing ownership and control issues.

In addition, we are proposing other changes to other aspects of our regulations in response to comments we received when we sought public participation in developing this proposed rule. Our intent is to improve, clarify, and simplify current regulations as well as to reduce duplicative and burdensome permit information requirements.

DATES: *Written comments:* We will accept written comments on the proposed rule until 5 p.m., Eastern time, on February 19, 1999.

Public hearings: Upon request, we will hold public hearings on the proposed rule at dates, times and locations to be announced in the **Federal Register** prior to the hearings. We will accept requests for public hearings until 5 p.m., Eastern time, on January 11, 1999. If you wish to attend, but not testify at, any hearing, you should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held. If you wish to attend and testify at any hearing, you should follow procedures under I. Public Comment Procedures—*Public hearings*.

ADDRESSES: If you wish to provide written comment, you may submit your comments by any one of several

methods (see Public Comment Procedures). We will make comments available for public review during regular business hours. You may mail or hand-deliver comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, D.C. 20240. You may also submit comments to OSM via the Internet at: osmrules@osmre.gov.

You may submit a request for a public hearing orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT**. We will announce the address, date and time for any hearing in the **Federal Register** prior to the hearing. If you are disabled and require special accommodation to attend a public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Earl D. Bandy, Jr., Office of Surface Mining Reclamation and Enforcement, Applicant/Violator System Office, 2679 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233-2796 or (800) 643-9748. E-Mail: ebandy@osmre.gov.

SUPPLEMENTARY INFORMATION

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I. Public Comment Procedures

Sixty (60) Day Comment Period: In view of the extensive outreach activity conducted in advance of this rulemaking and in order to expedite the publication of final rules, we will not extend the comment period beyond the usual 60 days.

Written comments: Written comments on the proposed rule by mail, electronically, or in person, should be specific, confined to issues pertinent to the proposed rule, and explain the reason for any recommended change. Submit three copies of your comments.

We will consider only those comments sent within the allowed time period (see **DATES**). We will log into the administrative record for the rulemaking all comments sent to the addresses listed above (see **ADDRESSES**). Comments delivered to addresses other than those listed above (see **ADDRESSES**) may not be logged in.

Comments over the Internet should be in an ASCII file, and you should avoid using special characters and any form of encryption. Please also include "Attn: RIN 1029-AB94" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 202-208-2847.

Public hearings: We will hold a public hearing on the proposed rule only upon request. We will announce the time, date, and address for any hearing in the **Federal Register** at least 7 days prior to the hearing.

If you are interested in participating at a hearing, you need to inform Mr. Bandy (see **FOR FURTHER INFORMATION CONTACT**) by 5:00 p.m., Eastern time, on January 11, 1999. If no one has contacted Mr. Bandy to express an interest in participating in a hearing by that date, we will not hold a hearing. If only one person expresses an interest, we may hold a public meeting rather than a hearing and include the results in the Administrative Record. We will determine the location of the hearing, if one is held, after reviewing the number of requests received and the locations desired.

If we hold a hearing, it will be transcribed, and it will continue until all persons wishing to testify have been heard. To ensure that we have an accurate record of the hearing, we ask that you provide a written copy of your testimony to the transcriber at the beginning of the hearing. We also

request that you send an advance copy of your testimony to us at the address specified for submitting written comments (see ADDRESSES).

We will make comments, including names and addresses of commenters, available in our Administrative Record for public review during regular business hours.

II. Background to Proposed Rules

In this Background section, we use a question-and-answer format to provide some of the history of this rulemaking and to explain the concepts we are introducing in the proposed rule. In Section III, Discussion of Proposed Rules, we have put together a section-by-section description of the proposed changes and the effects they would have if they were to become final rules. The proposed regulatory text is included in its entirety in the latter portion of this publication.

In 1998, the President ordered Federal agencies to begin writing public documents, including regulations, in plain language. Today's proposal introduces some plain language principles into OSM's body of regulations.

For example, there are numerous references to "you" and "we" in this document. In the regulatory text, "you" refers to the applicant for a surface coal mining operation, and "we" refers to the regulatory authority charged with enforcing the requirements in the regulations. In all but a few States, "we" means the State regulatory authority approved by the Secretary of the Interior to carry out the Surface Mining Act's requirements within the State's boundaries. In some cases, however, "we" means the Office of Surface Mining Reclamation and Enforcement (OSM)—the regulatory authority on Indian Lands and in the few States that do not have an approved State regulatory program. Where the regulatory text specifically refers to "OSM" or "the State," it is usually in reference to separate roles or responsibilities as the regulatory authority.

While "we" means the regulatory authority in the text of the regulation, it has a different meaning in the introductory text—also known as the preamble. Because the preamble describes how OSM has developed the regulation, the use of "we" in the preamble always refers to OSM.

A. What is the Permit-Block Sanction in the Surface Mining Control and Reclamation Act?

The Surface Mining Control and Reclamation Act of 1977 (SMCRA or the

Act), 30 U.S.C. 1201 *et seq.*, establishes requirements for the regulation of active surface coal mining and reclamation and for the restoration of abandoned mine lands. The Act authorizes OSM to review and approve a State program so that the State may become the regulatory authority and have primary responsibility to enforce the Act's requirements within its borders. The Act also contains numerous provisions governing the permitting of mining operations. One of the most powerful tools provided in SMCRA is the permit-block sanction in section 510(c).

Under Section 510(c), the regulatory authority may not issue a permit for a new operation when another surface coal mining operation "owned or controlled by the applicant" is in current violation of SMCRA. Such violators may have mined coal and left behind unreclaimed, on-the-ground, environmental problems. They may have forfeited their surety bonds. Some may owe the government for unpaid Abandoned Mine Land fees or civil penalty assessments. Still others may have multiple infractions in all of these areas. Section 510(c)'s intent is to prohibit the regulatory authority from issuing new permits to applicants who own or control operations with violations until they abate the violations for which they are responsible.

As a first step in this process, regulatory authorities must determine whether an applicant for a surface coal mining permit owns or controls an operation with a violation. This ownership or control determination is key to deciding whether an applicant should be held responsible for violations that do not appear in violation records under the applicant's name. Because individuals may apply for permits under different corporate names, it is easy to avoid being linked to violations at mines that the applicant may have controlled—violations that they should have abated.

B. How has OSM Implemented the Permit-Blocking Requirement?

Unfortunately, for most of the decade following enactment of SMCRA in 1977, neither States nor the Federal Government had devised an effective means of determining ownership and control to effectively implement section 510(c). While some States had attempted to set up mechanisms for tracking violators and their controllers, they relied heavily on the manual interpretation of paper files which were difficult to access and keep up-to-date. Even if an individual State had developed an effective method of tracking violators within its boundaries,

it still had to consult with other regulatory authorities to determine if out-of-State violators were trying to set up operations locally. These consultations often lacked consistency and relied on different filing systems and data standards. There was no national or regional system in place for keeping up with violators who moved from State to State leaving behind the mining and reclamation problems they had created.

In 1981, environmental groups sued the Secretary of the Interior alleging a nationwide failure to enforce section 510(c). The parties eventually negotiated a settlement (*Save Our Cumberland Mountains, Inc., et al. v. Clark*, No. 81-2134 (D.D.C. 1985) (Parker, J.)) under which OSM established the computer system now known as the Applicant/Violator System (AVS). The AVS became the central repository for violation information, as well as ownership and control information, enabling regulatory authorities to more effectively implement section 510(c).

During the two years following the settlement, we designed and built the AVS and negotiated Memoranda of Understanding with each of the primary States detailing how States would use the AVS and how they would assist OSM in maintaining and updating system data. Over the same period of time, we developed proposed rules to implement section 510(c) and related sections of SMCRA. We issued those rules in final form in 1988 and 1989 in Title 30, Chapter VII of the Code of Federal Regulations. They were known as the "ownership and control" rule (53 FR 38868 (1988)), the "permit information" rule (54 FR 8982 (1989)) and the "permit rescission" rule (54 FR 18438 (1989)). Under those rules, a regulatory authority would deny an application for a surface coal mining permit if the applicant owned or controlled an operation that was in violation of the Act, or if others who were in violation owned or controlled the applicant.

Specifically, the 1988 rule defined "ownership and control" at § 773.5 and required the regulatory authority to review violations associated with the applicant at § 773.15(b) so that regulatory authorities could determine who was eligible for a permit. The "permit information" rule published in 1989 described the requirements for the applicant to provide information on interests at § 778.13 and violations at § 778.14 needed by the regulatory authority to review the application. The "permit information" rule, while separate from the original ownership

and control rule, complemented it by requiring the applicant to supply the information necessary for the regulatory authority to make a permitting decision. The "permit rescission" rule, also published in 1989, included requirements at §§ 773.20, 773.21, and 843.21 for dealing with improvidently issued permits "those permits that must be rescinded due to the existence of a violation that would have prevented issuance of the permit had the regulatory authority been aware of it.

C. What is the Applicant/Violator System and how is it Used in Permit-Blocking?

The AVS is a computerized system containing two large banks of data. One bank houses information on owners and controllers of mining operations. As part of the permit application requirements, companies and individuals provide this information to the regulatory authority, which then loads the information in the AVS. The other bank houses information on violations, including failure to pay required fees and penalties, which we get primarily from regulatory authorities and our own financial management records.

Under current regulations, the regulatory authority checks the AVS during the review of each application for a mining permit. The AVS automatically compares the ownership and control information with the violation information to determine if links exist between the applicant and any outstanding violations. If the applicant is linked to certain violations in the AVS, OSM recommends to the regulatory authority that it deny the application unless the applicant submits proof that the violation has been corrected, is being corrected, or is being appealed through proper channels. By matching permit applicants to outstanding violations that they own or control, the AVS helps regulatory authorities implement section 510(c) faster, easier, and more reliably than was possible before AVS.

D. What Happened to the Regulations OSM Issued in 1988 and 1989?

The National Mining Association (NMA) and National Wildlife Federation filed suit challenging the validity of all three sets of OSM's rules implementing section 510(c). On August 31, 1995, the U.S. District Court for the District of Columbia upheld the three challenged rules in their entirety. See *National Wildlife Fed'n v. Babbitt*, Nos. 88-3117, 88-3464, 88-3470 (consolidated) (D.D.C. Aug. 31, 1995); *National Wildlife Fed'n v. Babbitt*, Nos. 89-1130, 89-1167 (consolidated) (D.D.C. Aug. 31,

1995); *National Wildlife Fed'n v. Babbitt*, Nos. 89-1751, 89-1811 (consolidated) (D.D.C. Aug. 31, 1995).

The NMA appealed the ruling and, on January 31, 1997, the U.S. Court of Appeals for the D.C. Circuit reversed the district court's decision. See *National Mining Ass'n v. Department of Interior*, 105 F.3d 691 (D.C. Cir. 1997) (hereinafter *NMA v. DOI*).

E. What did the Appeals Court Say was Wrong With OSM's Regulations?

The Appeals Court held that section 510(c) of SMCRA authorizes OSM to deny a permit only when "any surface coal mining operation owned or controlled by the applicant" is currently in violation of SMCRA. Thus, because under OSM's 1988 ownership and control rules the regulatory authority could also deny a permit when any person who owned or controlled the applicant was in violation of the Act, the Appeals Court invalidated OSM's ownership and control rule in its entirety. In addition, the court held that because OSM's permit information and permit rescission rules "are centered on the ownership and control rule * * *, they too must fall." *Id.* at 696.

Although the Appeals Court found only one aspect of OSM's rules to be flawed, it invalidated the entire ownership and control rule as well as the two related sets of regulations, including many provisions which were not inconsistent with the rationale in the court's decision. At the same time, nothing in the court's decision eliminated the responsibility of OSM and State regulatory authorities to implement the permit-blocking requirements of section 510(c) and the requirement in section 507(b) of the Act to collect certain permit information. This meant that OSM and the States faced the prospect of making permitting decisions as required in the Act without any regulations to support those decisions. The Appeals Court's action created a great deal of uncertainty among State regulatory authorities about how to continue to meet their responsibility to determine who was eligible to receive a permit.

F. What did OSM do in Response to the Appeals Court Decision?

Immediately following the Appeals Court decision, we made adjustments in our process for responding to regulatory authorities' requests for permit recommendations. In each case, before we recommended that a permit be denied based on the AVS check, we determined if the recommendation would be consistent with the court's decision. In those cases where it would

have been inconsistent—those where the recommendation would be based on the violations of those who owned or controlled the applicant—we informed the regulatory authority that we could no longer recommend that it deny the permit.

Soon after the Appeals Court decision, we formed a team of Department of the Interior employees with experience in ownership and control issues. We instructed the team to evaluate the court's decision and determine what we needed to do to comply with it. As a first step, to remove the uncertainty created by the decision, and to ensure there would be no lapse in approved State programs, we published interim final rules (the IFR) on an emergency basis on April 21, 1997 (62 FR 19451). The IFR were consistent with the rationale in the Appeals Court decision. The rules did not authorize the regulatory authority to deny permits because of outstanding violations of an applicant's owners and controllers.

We determined that we had "good cause" to publish the IFR without notice and comment because of the need to have regulations in place. At the same time, we committed to propose further rulemaking "in accordance with standard notice and comment procedures."

G. How has OSM Met its April 1997 Commitment to Propose Additional Regulations?

In June of 1997, our ownership and control team met with State regulatory authorities to discuss rulemaking options. As a result of those discussions, further deliberations within the Department of the Interior, and input from citizens and the regulated industry, we decided to take full advantage of the opportunity to re-evaluate all aspects of the ownership and control rules and related regulations, to propose improvements, to clarify requirements, and to reduce unnecessary burdens wherever possible.

On October 29, 1997, we issued an Advance Notice of Proposed Rulemaking in the **Federal Register** our intent to propose rules, hold public meetings and solicit comments from all interested parties on a wide range of topics related to ownership and control. 62 FR 56,139 (1997). Also on October 29, OSM Director Kathy Karpan held a press conference to announce a new and innovative rulemaking process that would include extensive public outreach and consideration of any suggestions that could improve the ownership and control rules.

Representatives from the coal industry, environmental groups, State

regulatory authorities, the press, and a congressional authorizing subcommittee with responsibility for OSM's programs participated in the Director's press conference. The Director promised a "no-holds-barred" approach in which all aspects of OSM's ownership and control rules would be open for discussion. Though the task was considerable, the goal was simple: develop the best possible rules that would be fair, effective and legally defensible.

The Ownership and Control Team conducted the Director's public outreach initiative from October 29, 1997, through January 16, 1998. The Team invited about 900 people and organizations to participate and provided everyone with a topics paper to elicit ideas, comments, and suggestions on possible regulatory changes. Seventy people attended seven public meetings held in different locations throughout the U.S. We offered to meet separately with any person or group requesting a meeting. Based upon such a request, members of the Team met with the National Mining Association. We also held individual discussions with several environmental advocates. In addition to holding the public meetings, the team received written comments.

At the conclusion of the outreach, the team began developing rulemaking options and recommendations to present to the Director on dozens of regulatory provisions related to ownership and control. As the team developed proposed rule language, members continued discussions with our State partners and kept them informed of the team's progress, including holding a formal States-OSM meeting to discuss the results of the outreach. Today's proposal is the culmination of months-long review, analysis and deliberation that fulfills our commitment in the IFR to proposed further rules with full public notice and opportunity for comment.

H. How Does This Proposal Relate to the Appeals Court Decision and Interim Final Rule?

This proposal is consistent with the IFR and the January 31, 1997, Appeals Court decision in that it would not authorize the denial of permits based on outstanding violations of an applicant's owners and controllers. However, it goes farther in reflecting our decision to take full advantage of the opportunity to re-evaluate all aspects of the ownership and control rules, propose improvements, clarify requirements, and reduce any unnecessary burdens placed on States and the regulated

industry. It also reflects suggestions and ideas presented to us during the public outreach period.

In addition to ensuring that the current proposal is consistent with the scope of section 510(c) as described by the Appeals Court, we have looked to the court's decision for guidance in interpreting other aspects of SMCRA and implementing regulations. For example, the court explained that, while we may only block permits based on the violation histories of operations owned or controlled by the applicant, we have "leeway in determining who the applicant is" and may "pierce the corporate veil" when appropriate to identify the "true applicant." *NMA v. DOI*, 105 F. 3d at 695.

Keeping in mind the Appeals Court's commentary, and in consultation with our State partners, and fully considering the views expressed during public outreach, we have evaluated our existing authorities to determine how we can more effectively address violations of the Act. While the permit-block sanction authorized in section 510(c) will continue to be the primary tool for determining who is eligible to mine, it will be much less effective without the ability to consider the violations of those who own or control the applicant. This makes it even more important that we effectively use our other authorities under SMCRA to deter mining by those who are either unwilling or unable to meet the obligations of their permits. Indeed, during the public outreach, some commenters suggested that we make more use of enforcement authorities already granted under the Act and in regulations rather than relying so heavily on permit blocking. In this vein, the Appeals Court noted that "blocking permits under section 510(c) is not the only regulatory mechanism under SMCRA." *Id.* at 695.

I. How Would These Rules Help Bring About More Effective Regulation of Mining?

In assessing how we could use available authorities to improve compliance with SMCRA, we have focused on four key areas: (1) improving the quality and usefulness of the information gathered during the permit application process and holding applicants fully accountable for providing all required information; (2) ensuring that permit eligibility determinations include consideration of all information indicating the likelihood of an applicant meeting the obligations of the permit; (3) verifying, through the increased use of investigations, that applicants have provided complete and

accurate information; and (4) more effectively using currently available alternative enforcement capabilities to ensure compliance by those who own, control or direct mining operations in cases where conventional enforcement mechanisms prove inadequate. We have concluded that these tools can be used more effectively to achieve greater overall compliance with SMCRA.

J. What Would be the Major Effects of This Proposal?

The major effects of this proposal are as follows:

- Consistent with the January 1997 Appeals Court decision, regulatory authorities would continue to deny applications for permits when the applicant has an outstanding violation or when the applicant owns or controls an operation with an outstanding violation.
- An applicant also would not be eligible for a permit if an owner or controller of the applicant has demonstrated such disregard for the environment that such person has been barred, disqualified, restrained, enjoined, or otherwise prohibited from mining by a Federal or State court.
- The controllers of an applicant would be on notice of their duty to comply with the requirements of the Act and the rules would require them to attest to this fact.
- The regulatory authority would more thoroughly review and verify violation and ownership and control information.
- Uncorrected violations of the Act and Federal and State regulations that remain uncorrected would be subject to enforcement actions, including the alternative enforcement mechanisms already available in regulations.
- The regulatory authority would more heavily focus enforcement resources on those operators who lack a demonstrated history of compliance and place less emphasis on those who have a demonstrated history of compliance.
- The information the regulatory authority would require from applicants would more closely conform to the information requirements of section 507(b) of the Act.
- The definitions of "ownership" and "control" in the rules would aid both the applicant and the regulatory authority in identifying all parties with obligations under a permit.
- Duplicative and burdensome information requirements that applicants and regulatory authorities must currently meet would be eliminated.
- The current presumptions that ownership or control exists would be

replaced with a requirement that the regulatory authority make a finding of actual ownership or control.

- Regulatory authorities would condition permits to ensure compliance based on how long the applicant has been mining, whether the applicant has a successful environmental compliance record, and whether the applicant has owners or controllers with outstanding violations.

K. How Would Conditioning Permits Based on Compliance History Work?

In this proposal, we introduce the concept of having additional permit conditions for applicants depending on how well each has demonstrated a commitment to sound mining and reclamation practices. Possibly the best predictor of the likelihood that an applicant will meet the obligations of a permit is the record of how well the applicant has met them for past operations. Applicants with good environmental compliance records have earned a greater degree of trust than those who have not practiced sound mining and reclamation, or who have limited surface coal mining experience, or who have owners and controllers linked to outstanding violations. While all permittees would still be subject to the same on-the-ground mining and reclamation requirements, we propose that some of the administrative and procedural requirements or permit conditions would differ depending on the record of past mining.

Specifically, we propose that regulatory authorities place additional conditions in the permits of applicants who *do not have* established a record of successful environmental compliance. Such additional conditions also would apply to applicants whose owners or controllers have links to outstanding violations. Those additional conditions would include payment of all civil penalties, AML reclamation fees, and AML audit debts within the 30-days after we provide specific notice that they are due. These permittees also must take all possible steps to abate any outstanding violation within the period set for abatement. And, the permittee must maintain uninterrupted compliance with all provisions of any abatement plan or payment schedule or other settlement agreement.

Under our proposal, establishing a record of successful environmental compliance would be demonstrated if the applicant (1) has mined and reclaimed under approved permits for at least five years before the date of application; (2) has no outstanding violations; and (3) does not have owners

or controllers who are linked to any outstanding violations.

We also propose that the regulatory authority may presume that a notice of violation existing at the time of application is being corrected for applicants *having* established a record of successful environmental compliance, as long as the period allowed for abatement of the notice of violation has not yet expired. This presumption would *not apply* to applicants who *do not have* an established record of successful environmental compliance.

The proposed rule provides that failure to comply with any permit condition by a permittee who was found not to have established a record of successful compliance at the time the permit was issued may result in a regulatory finding that the permittee is unable or unwilling to comply with the mining and reclamation plan. Further, such a finding would constitute adequate reason for the regulatory authority to promptly issue an order for the permittee to show cause why the permit should not be suspended or revoked.

L. What are Some Examples of how the New Rules Would Treat Different Applicants?

The following examples illustrate how this rule changes permit eligibility and permit conditions. Six hypothetical mining companies—Able, Baker, Austin, Charley, Destiny and Eagle—have applied for permits to mine. Able, Baker and Austin are denied permits, while Charley, Destiny and Eagle are issued permits. Charley's and Destiny's permits have the additional permit conditions described in this proposed rule, while the permit issued to Eagle does not. Here's why:

1. Able Coal Company has been mining coal for 12 years and has one outstanding violation from a prior operation. Regardless of Able's overall compliance record or the number of years the company has been mining, Able is ineligible for a permit under section 510(c) of SMCRA until the violation is remedied.

2. Baker Industries has been mining coal for 14 years and has no outstanding violations; however, a company that Baker controls—Farthing Coal—does. Under section 510(c), Baker is ineligible for a permit because it owns or controls an operation with a violation. As with Able Coal, regardless of Baker's overall compliance record or the number of years the company has been mining, Baker is ineligible for a permit under section 510(c) of SMCRA until Farthing's violation is remedied.

3. Austin Coal has been in operation without compliance problems for 10 years. Six months ago, Austin was purchased by Owens Enterprises. John Owens, president of Owens Enterprises, was recently issued a permanent injunction by a State court prohibiting him from mining due to numerous environmental problems at a half-dozen Owens mining operations. Issuing a permit to Austin would be inconsistent with the state court order in that it would again place John Owens in a position of control over a mining operation. Austin's application would be denied.

4. Charley Mining Company has been mining coal for six years without any compliance problems. However, Charley is controlled by Fickle Commodities, which has an outstanding violation. Charley would be eligible for a permit because it does not own or control the operation with the violation. However, the control that Fickle exercises over Charley puts Charley at an increased risk of not meeting all the requirements of its permit. The permit issued to Charley would be conditioned as described in this proposed rule.

5. Destiny Mining, which began mining operations three years ago, also has been mining without any compliance problems. Destiny is controlled by Fathom, Inc., which has no outstanding violations. Destiny would be eligible for a permit because it does not own or control any operations with violations. However, despite the good compliance record of Destiny and the violation-free status of its controller, the permit issued to Destiny would have to be conditioned as described in this proposed rule because the company has not yet accumulated the minimum required five years of successful compliance experience.

6. Eagle Coal Works also has been mining without any compliance problems for six years. Eagle is controlled by Frisk Mining, which is controlled by F&A Enterprises, which is a wholly owned subsidiary of the Faithful Corporation. None of the owners or controllers—Frisk, F&A or Faithful—has any outstanding violations. Eagle would be eligible for a permit because it does not own or control any operations with violations. Further, because of Eagle's successful compliance record over a period of at least five years, and the violation-free status of the three companies that own or control Eagle, the company's permit would not have the additional permit conditions described in this proposed rule.

M. Would This Rule Affect Other Documents That OSM has Published in the Past?

OSM proposes to incorporate into the regulations the provisions of the existing Memoranda of Understanding (MOUs) with primacy States regarding use of the AVS. Thus, requirements for State regulatory authorities related to ownership and control will be consolidated for improved clarity and ease of reference. The MOUs have been widely accepted by the States and OSM as effective mechanisms for working together in operating and maintaining the AVS.

In addition, as part of today's action, we formally withdraw our June 28, 1993, proposal (58 FR 34652 *et seq.*). Our 1993 proposal would have amended the regulations invalidated by the Appeals Court but, as a result of the court's decision, has been rendered moot.

N. Would the Rule Affect State Primacy?

In the process of re-evaluating our ownership and control procedures, and in response to concerns raised during public outreach, we will be changing the recommendation process that we use in response to State requests for AVS checks. Currently, when information in the AVS indicates that the regulatory authority should deny an application, we review the relevant data to confirm that the recommendation to deny is based on accurate and recent information. If we do not discover anything that would call the recommendation into question, we recommend to the regulatory authority that it deny the permit, except in instances where the recommendation would be inconsistent with the court ruling.

A long-standing issue concerning the use of AVS has been our permitting recommendations to State regulatory authorities. Frequently, State regulatory authorities were perceived as considering our recommendations as dictates, rather than as advice, on how States were to make permitting

decisions. While our intent in making recommendations to States has been to ensure quality control of AVS-generated information, we believe that a change would help to clarify our role and the role of the States in permitting. Instead of providing permit eligibility recommendations, we propose to use AVS to provide a variety of reports, including ownership and control and violation reports. State regulatory authorities would then perform their own analysis of applicants' legal identity information, permit history, and compliance history and make permitting decisions without an OSM recommendation.

This revised approach should leave no doubt that it is OSM's responsibility to operate the AVS and maintain the integrity of the data in the system, and it is the State's responsibility to decide whether to issue the permit (of course, OSM would make the permitting decisions in Federal program States). As with other aspects of the implementation of approved State programs, this activity would be subject to our oversight reviews.

Although our policy concerning whether or not to provide recommendations to regulatory authorities is not established in regulations, and the change described here would not require any revision to our regulations, we are mentioning this change here for the public's information because it arose in large part from the public outreach process for this rulemaking.

O. How Does OSM Address the Information Collection Burdens of This Rule?

Sections 773.10, 774.10 and 778.10 address information collection requirements and the appropriate Office of Management and Budget (OMB) clearance numbers for each part. We propose to amend these sections by updating the data in each section and estimating the burden of complying with the information collection requirements for each response. The proposal also includes the addresses of

OSM and OMB officials where comments on the information collection requirements may be sent.

P. What Provisions in SMCRA Authorize These Proposed Changes?

The proposed rules are based on the following sections of SMCRA:

Section 201—Creation of the Office
Section 402—Reclamation Fee
Section 506—Permits
Section 507—Application Requirements
Section 510—Permit Approval or Denial
Section 511—Revision of Permits
Section 518—Penalties
Section 521—Enforcement

III. Discussion of Proposed Rules

This proposal affects the following sections of OSM's current regulations: §§ 701.5, 724.5, 773.5, 773.10, 773.15, 773.16, 773.17, 773.18, 773.20, 773.21, 773.22, 773.23, 773.24, 773.25, 774.10, 774.13, 774.17, 778.5, 778.10, 778.13, 778.14, 842.11, 843.5, 843.11, 843.13, 843.21, 843.24, and part 846.

Below is a table listing changes to the rules. We have included it here to describe briefly where the rules are proposed to be changed, the nature of the changes, and the intended effect. The table is arranged in the same sequence as the text of the proposed rule and the section-by-section description of rule changes, which follows the table. It is an important cross-reference in identifying provisions that are proposed to be added, revised, deleted, and moved.

In trying to understand the proposed changes, it is best to start with the table. For many of the proposed changes, the table will be sufficient to understand what we are proposing and its intended effect. For those changes where more explanation is needed, additional description is included in the discussion of our proposal following the table. And, to further clarify the proposed changes, we have included the full text of the regulatory changes at the end of this publication.

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Part	Section	Description of proposed change
Part 701-- Permanent Regulatory Program	701.5	<p>Definitions added or amended for the following terms:</p> <ul style="list-style-type: none"> - <u>Applicant/Violator System</u> or AVS (from 773.5; amended) to make clear that States make permitting decisions and clarify the purpose of the AVS and to bring the definition into compliance with the Court of Appeals decision. - <u>Federal violation notice</u> (from 773.5)--the definition is unchanged but is moved to this section to have broader applicability and utility under the regulations. - <u>Knowing</u> or <u>Knowingly</u> (from 724.5 and 846.5; amended)--definition is amended to broaden the scope of its applicability to persons or entities other than a corporate permittee. - <u>Link to a violation</u> (new; formed from "Ownership or control link")--definition will identify individuals with outstanding violations at other mine sites in an owner/controller capacity to the current applicant. - <u>Outstanding violation</u> (new)--refers to any and all violations that have not been abated or corrected and the time for abatement has expired. - <u>State violation notice</u> (from 773.5)--the definition is unchanged but is moved for broader applicability and utility under the regulations. - <u>Successful environmental compliance</u> (new) definition is proposed to establish a standard for measuring timely environmental compliance including payment of fees and any penalties. - <u>Successor in interest</u> (amended)--definition is amended to apply

Part	Section	Description of proposed change
		<p>to persons who apply for and are approved under a change in the permittee.</p> <ul style="list-style-type: none"> - <u>Violation notice</u> (from 773.5; amended)--definition is expanded in scope to apply to, among other things, bond forfeiture where the cost of reclamation exceeds the amount of the forfeited bond or, in bond pool states, that additional reclamation or reimbursement is required before the violation would be deemed abated. - <u>Willful</u> or <u>Willfully</u> (from 724.5 and 846.5; amended)--the definition has been expanded in scope to apply to other persons or entities other than a corporate permittee. - <u>Willful violation</u> is removed as inconsistent with definition of <u>willful</u> or <u>willfully</u>.
Part 724-- Individual Civil Penalties	724.5	Definitions for <u>knowingly</u> and <u>willfully</u> are removed from 724.5 and moved to 701.5.
Part 773-- Requirements for Permits and Permit Processing	773.5	<p>Definitions for <u>Applicant/Violator System</u> or <u>AVS</u>, <u>Federal violation notice</u>, <u>State violation notice</u>, and <u>Violation notice</u> are moved to section 701.5.</p> <p>Definition for <u>Ownership or control link</u> is removed from the section and replaced in section 701.5 with a definition for <u>Link to a violation</u>.</p> <p>Definition for <u>Owned or controlled</u> and <u>owns or controls</u> is removed from this section, amended, and moved to new section 778.5 under <u>Ownership</u> and <u>Control</u>.</p>

Part	Section	Description of proposed change
	773.10	Information collection estimates are updated and revised to reflect the changes under the proposed rule.
	773.15	Amended section 773.15 Review of Permit Applications--revises the general requirements, permit eligibility criteria, and relevant procedures to include the requirements for accurate and complete information and other informational criteria.
	773.16	Added New Section--Permit Eligibility Determination--this new section contains the provisions for a permit eligibility determination.
	773.17	Amended to add controller certification.
	773.18	Added New Section--Additional permit conditions--this section will apply to applicants who cannot meet the successful environmental compliance definition or who have less than 5 years of experience in surface mining operations.
	773.20	Amended section on Improvidently Issued Permits to be consistent with proposed 773.15 and 773.16.
	773.21	Amended section on Rescission Procedures for Improvidently Issued Permits to be consistent with proposed 773.15 and 773.16.
	773.22	Current 773.22 is removed.
		New 773.22 is created to add provisions to give OSM the authority to show violations attributable to applicants, permittees, surface coal mining operations, and controllers of surface coal mining operations.
	773.23	Current 773.23 is removed because the provisions are based on presumptions of common control as the basis for permit eligibility.

Part	Section	Description of proposed change
	773.24	Amended to remove references to challenging ownership or control links and to provide procedures for challenging whether a person had the ability to control a surface coal mining operation that has outstanding violations.
	773.25	Amended to remove references to challenging ownership or control links and to provide standards for challenging whether a person had the ability to control a surface coal mining operation that has outstanding violations.
Part 774-- Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights	774.10	Information collection estimates are updated and revised to reflect the changes under the proposed rule.
	774.13	Paragraph (e) was added to require the regulatory authority be notified when a person not requiring approval is changed or added under the permit.
	774.17	Revised to clarify who is subject to regulatory approval under transfer, assignment, or sale of permit rights. Revised to amend the requirements for a successor in interest.
Part 778-- Permit Applications- - Minimum Requirements for Legal, Financial, Compliance, and Related Information	778.5	Added to provide for amended definitions of <u>ownership</u> and <u>control</u> . The definitions are moved to part 778 to emphasize that ownership and control relate to the information disclosure requirements for permit applications.
	778.10	Amended to show any change in the public reporting and record keeping burden for part 778 as a result of this proposal.
	778.13	Amended to (1) more closely reflect the requirements of section 507(b) of the Act, (2) require applicants to disclose all persons having the ability to control the proposed operation, and (3) provide for reductions in the information collection burden for applicants. The heading of 778.13 is amended to Legal identity and identification of interests.
	778.14	Amended to remove the current requirement that an applicant must certify as to the status of notices of violation.

Part	Section	Description of proposed change
Part 842-- Federal Inspections and Monitoring	842.11	Amended paragraph (e)(3)(i) to remove reference to owners and controllers of a permittee and operator and to clarify to whom the provision applies.
Part 843-- Federal Enforcement	843.5	Deleted § 843.5, definition of <u>unwarranted failure to comply</u> was moved to § 846.5 and definition of <u>willful violation</u> was deleted as inconsistent with definition under § 701.5 of <u>willful</u> or <u>willfully</u> .
	843.11	Amended paragraph (g) to show correct cross-references in this proposal and to delete the reference to owners or controllers of the permittee.
	843.13	Suspension or revocation of permits: Pattern of violations. Section is moved to § 846.14 and amended.
	843.21	Amended to address inaccurate, incomplete, or false information.
	843.24	Deleted. Oversight to be conducted in concert with normal permitting oversight.
Part 846-- Individual Civil Penalties	846.5	Definitions of knowingly and willfully are moved to 701.5 Part 846 is amended, expanded and reorganized to show the provisions for all alternative enforcement actions.

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Following is the section-by-section description of the proposed changes to OSM's regulations.

A. Section 701.5—Definitions

We propose "Applicant/Violator System or AVS" to mean the automated information system of applicant, permittee, operator, violation, and related data OSM maintains to achieve compliance with, and to implement, the purposes of SMCRA. The amended definition clarifies the purpose of the computerized system of data and information in light of the January 31, 1997 Appeals Court decision, including removing language from the current definition to make it more consistent with the court's ruling.

We propose "knowing or knowingly" to mean that an individual knew or had reason to know in authorizing, ordering, or carrying out an act or omission that

such an act or omission constituted a violation of the Act, or a failure or refusal to comply with the Act.

We also propose the related term "willful or willfully" to mean that an individual acted either intentionally, voluntarily or consciously, and with intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out an action or omission that constituted a violation of the Act, or a failure or refusal to comply with the Act.

We propose to define "knowing" and "knowingly" together, and "willful" and "willfully" together, and to expand the scope of the definitions so that they apply to persons in addition to corporate permittees.

We propose to delete "willful violation" from §§ 701.5 and 843.5. We believe that the definition of "willful violation" is inconsistent with the definition of "willfully." By deleting

"willful violation" and adding "willful" to the definition of "willfully," we intend to make the terms "willful" and "willfully" consistent in their meaning.

We propose to add "link to a violation" to the regulatory definitions at § 701.5. "Link to a violation" is proposed to mean that a person owning or having the ability to control a proposed surface coal mining operation has owned or had the ability to control surface coal mining operations at another site at the time a violation existed at that operation. In proposing this definition, we emphasize an important distinction in both coverage and use. It does not cover an applicant's ownership or control of operations that are in violation of the Act—a relationship to violations considered in determining permit eligibility under section 510(c) of the Act. Instead, it covers the relationship between an applicant and an outstanding violation

where the two operations share the same controller—a relationship that we propose should serve as the basis for conditioning a permit once it is issued. We also propose that a “link to a violation” is the basis for determining the proper means of enforcement to achieve abatement or correction of an outstanding violation, including alternative enforcement.

We propose to add “outstanding violation” to the regulatory definitions at § 701.5 to mean a violation notice that remains unabated or uncorrected beyond the abatement or correction period. The definition encompasses all violation notices that remain unabated or uncorrected after all regulatory provisions for abatement or correction have expired. We propose to define “outstanding violation” so that the regulatory definition coincides with how the term is commonly used and widely accepted.

We propose “successful environmental compliance” to mean having no outstanding violations and demonstrating consistent abatement and other correction of violations, payment of civil penalties, and payment of reclamation fees within the time frames established for abatement and payment, allowing for administrative due process. We are adding this definition to § 701.5 to assist regulatory authorities in making a finding regarding an applicant’s or other person’s history of compliance with the Act, State laws, and any other relevant laws, regulations, or requirements. The definition of “successful environmental compliance”, and the provisions proposed at §§ 773.15(b)(3), 773.16, and 773.17, are intended to assist regulatory authorities in making the distinction between persons who have a record of successful environmental compliance and those who do not.

We propose “successor in interest” to mean a person who applies to the regulatory authority for approval under a change in an existing permittee. This change reflects the distinction we propose to make between those instances of a transfer, assignment, or sale of the rights granted under a permit that require only approval for a modification of the existing permit information and where a new permit is required as a result of a successor in interest.

We intend this change in the definition and the changes in proposed § 774.17 to be more consistent with the permitting requirements for a successor in interest in section 506(b) of the Act. Section 506(b) of the Act requires that the person proposing to continue mining and reclamation operations

under the existing permittee’s approved mining and reclamation plans must apply for a new permit within 30 days of succeeding to the interests of the existing permittee. The person also must be able to obtain bond coverage equivalent to the coverage obtained by the existing permittee.

We propose “violation notice” to mean any written notification from a governmental entity of a violation of the Act or any Federal regulation issued under the Act, a State program, or any Federal or State law, or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. The definition includes, but is not limited to: (1) a notice of violation; (2) an imminent harm cessation order; (3) a failure-to-abate cessation order; (4) a final order, bill, or demand letter pertaining to a delinquent civil penalty; (5) a bill or demand letter pertaining to delinquent reclamation fees; (6) a notice of bond forfeiture where one or more violations upon which the forfeiture was based have not been corrected; (7) a notice of bond forfeiture where the cost of reclamation has exceeded the amount forfeited, or in States with bond pools, a determination that additional reclamation or reimbursement is required.

In addition to moving the definition of “violation notice” from § 773.5 to § 701.5, we are proposing several amendments. The phrase “delinquent abandoned mine reclamation fees,” which is in the current definition, is changed to “delinquent reclamation fees” to be more consistent with language in section 402 of the Act. The definition also would apply to a notice of bond forfeiture where the cost of reclamation has exceeded the amount forfeited and, in States with bond pools, a determination that additional reclamation or reimbursement is required. This is intended to cover additional circumstances of bond forfeiture in response to information gathered in the public outreach.

We propose to move the definitions of “Federal violation notice” and “State violation notice” from § 773.5 to § 701.5.

B. Section 773.5—Definitions

We propose to move each regulatory definition currently contained in § 773.5, with the exception of “ownership or control link,” “owned or controlled” and “owns or controls” to § 701.5. We propose to eliminate definition of the “ownership or control link.” “Ownership or control link” is too closely associated with the way we implemented the 1988 “ownership or control” and related rules that the

Appeals Court invalidated. Our reasons for proposing to move and amend the definition of “owned or controlled” or “owns or controls” to § 778.5 are discussed below, in that section. The net result of these proposed changes to § 773.5 means is that this section is no longer required under part 773.

C. Section 773.10—Information Collection

We propose to amend the information collection provision in § 773.10. Consistent with the Paperwork Reduction Act, we note in paragraph (a) that the Office of Management and Budget (OMB) has approved the information collection requirements of this part. The regulatory authorities will use this information in processing surface coal mining permit applications. Persons intending to conduct such operations must respond to obtain a benefit. A Federal 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 clearance number for this part is 1029–NEW.

In proposed paragraph (b) we estimate that the public reporting burden for this part will average 34 hours per response, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 210, 1951 Constitution Avenue, 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. Please refer to OMB Control Number 1029–NEW in any correspondence.

D. Section 773.15—Review of Permit Applications

At § 773.15, we propose to revise the general requirements to be consistent with other changes we are proposing today and to include additional responsibilities for regulatory authorities in reviewing permit applications. These responsibilities include determining permit eligibility and requiring information to be accurate and complete. We also propose to ensure that applicants, and those persons who certify themselves to be the

owners and controllers of an applicant, comply with these requirements in order to obtain a permit for surface coal mining and reclamation operations.

Paragraph (a)(1) is proposed to be amended by changing the reference to a hearing in the last sentence from (b)(2) of this section to part 775. Part 775 provides requirements for administrative and judicial review of decisions on permits.

Proposed paragraph (a)(3) requires that the regulatory authority make a determination under proposed § 773.15 as to the eligibility of every applicant under § 773.16 before an applicant may receive a permit. Proposed § 773.16 provides for a determination of permit eligibility and is discussed below.

Proposed paragraph (a)(3)(i) provides that the regulatory authority must evaluate each application for a permit to determine whether it contains accurate and complete information to make the finding required under § 773.15(c)(1).

Proposed paragraph (a)(3)(ii) provides that if, at any time during the review process, the regulatory authority determines that the applicant has omitted, or provided inaccurate or incomplete, legal identity, compliance, or technical information, the regulatory authority must require the applicant to correct the omission, inaccuracy, or inconsistency. It also provides that the regulatory authority may discontinue review of the application until the issue is resolved. Such failure to provide accurate and complete information will result in, at a minimum, a delay in the approval of an application for a permit.

Proposed paragraph (b) requires that the regulatory authority review each applicant's legal identity information, permit history, and compliance history. We have restructured and amended the provisions at § 773.15(b) to enable regulatory authorities to evaluate an applicant based upon a three-part review. In reviewing the permit application and deciding whether to place additional conditions on a permit, the regulatory authority will evaluate the applicant's (1) legal identity information, (2) permit history, and (3) compliance history. This evaluation process incorporates the use of investigations to build a body of findings in the assessment of an applicant's eligibility.

Proposed paragraph (b)(1), the first part of the permit eligibility review process, requires the regulatory authority to make an initial determination whether the applicant's legal identity information submitted under § 778.13 is accurate and complete based upon the best information available. Within 30 days after the

preliminary determination that the information is accurate and complete, regulatory authorities are required to update the relevant records in AVS. The determination and update of AVS records would have to occur before any regulatory authority request for applicant compliance reports from AVS under paragraph (b)(3) in this section. This preliminary determination should not be confused with the finding the regulatory authority makes on all information in the permit application under § 773.15(c)(1).

Proposed paragraph (b)(1)(i) requires that, if the regulatory authority finds that an applicant, permittee, operator, or any owner, controller, principal, or agent of the applicant, permittee, or operator has knowingly or willfully concealed information about any person owning or having the ability to control the applicant, permittee, or operator, the regulatory authority will follow the courses of action described in paragraph (b)(1)(i)(A) and (B).

Proposed paragraph (b)(1)(i)(A) requires the regulatory authority to inform the applicant in writing of the regulatory authority's finding; request that the applicant, permittee, or operator disclose all persons owning or having the ability to control the applicant; and convey to the applicant, permittee, or operator that the information must be provided to the regulatory authority before it makes a decision on the application.

Proposed paragraph (b)(1)(i)(B) requires the regulatory authority to investigate the applicant, permittee, or operator and the information provided to determine if the request made under paragraph (b)(1)(i)(A) has been met with full disclosure. This provision is the first instance where we have incorporated investigation into the review of permit applications. Investigation is one of the four key elements of this redesigned approach to our regulatory program, in addition to permit information, permit eligibility, and alternative enforcement. In this provision, we intend that the regulatory authority actively determine whether the applicant, permittee, or operator has complied with the regulatory authority's request to fully disclose all relationships under proposed § 778.13.

Proposed paragraph (b)(1)(i)(B)(1) provides that, depending on the results of the applicant's response to the provision in paragraph (b)(1)(i)(A) and the investigation under (b)(1)(i)(B), the regulatory authority may deny approval of the application. We believe that if the applicant, permittee, or operator fails to comply with the regulatory authority's request to fully disclose all relationships

under proposed § 778.13, the applicant, permittee, or operator has not complied with the requirements of § 778.13, and therefore, the application is incomplete. On that basis, the regulatory authority may elect to deny approval of the application.

Proposed paragraph (b)(1)(i)(B)(2) provides that, if the regulatory authority denies the application under paragraph (b)(1)(i)(B)(1), the regulatory authority may refer the applicant, or owner, controller, principal, or agent of the applicant, to the Attorney General or equivalent State office for prosecution under section 518(g) of the Act and proposed § 846.11 of the regulations.

Proposed paragraph (b)(2), the second part of the permit eligibility review process, provides for the review of the applicant's permit history. First, proposed paragraph (b)(2)(i) requires the regulatory authority to use AVS and any other available databases or information to review the permit history of the applicant, and that of any person with the ability to control the applicant. The purpose of the review is to determine how long they have conducted surface coal mining operations and whether their conduct is in compliance with applicable requirements of the Act, Federal regulations and equivalent State regulations.

Proposed paragraph (b)(2)(ii) provides that an applicant with five or more years of experience as a permittee or operator of a surface coal mining operation will not be subject to additional permit conditions proposed at § 773.18 unless any person with the ability to control the applicant or the operation is responsible for an outstanding violation.

In proposed § 773.15, we introduce the concept of considering past mining experience and placing additional conditions on issued permits for those applicants lacking successful experience. We propose that five years is the minimum amount of experience that an applicant should have in order for a regulatory authority to be reasonably confident that a surface coal mining and reclamation operation will be successful and not become a burden to the regulatory authority and the general public. We propose the experience criterion to provide regulatory authorities with an indicator of the potential success of a surface coal mining operation.

Proposed paragraph (b)(2)(iii) provides that, if it appears that none of the persons identified in the application has any previous mining experience, the regulatory authority must request that the applicant affirmatively state that neither the applicant nor any person owning or having the ability to control

the proposed operation possesses mining experience. This provision also requires that the regulatory authority investigate to determine whether any person other than those identified in the application will control the proposed operation as either an operator or other controller. As with paragraph (b)(2)(ii) above, we propose paragraph (b)(2)(iii) to provide regulatory authorities with an indicator of the potential success of a surface coal mining operation.

Failed mining operations place increased burdens on State programs to reclaim such sites. We believe that permittees that fail, and their owners and controllers, must be required to comply with special conditions in order to continue to receive approval for additional permits. We received comments during the public outreach preceding the development of this proposal that stressed the need for some form of distinguishing criteria to apply to applicants for permits. It was suggested that we consider giving an advantage in the permitting process to applicants with successful compliance records and impose additional requirements on applicants who do not meet the criteria.

We invite comments on the two criteria proposed here in § 773.15—five or more years of mining experience and successful environmental compliance—as well as suggestions for other criteria that may be used to distinguish among proposed operations that are likely to be successful and those that are not. We also invite comments on the criterion proposed in § 773.16—withholding of the presumption of abatement of a notice of violation—and other suggestions as to how the distinctions may be implemented. For example, should the criteria apply to the owners and controllers of applicants in addition to the applicant itself?

Paragraph (b)(3), the third part of the permit eligibility review process, provides for the review of an applicant's compliance history. We propose that this review include a review of violations and an examination of the applicant's controllers.

Proposed paragraph (b)(3)(i) provides that the regulatory authority must request a report from AVS on the applicant's history of compliance with SMCRA for an application for a permit; revision; renewal; transfer, assignment, or sale of the rights granted under a permit; and an application from a successor in interest to the rights granted under a permit. This provision specifies all of the circumstances under which a review of violations must be conducted and includes each of the relevant permitting or approval

processes. We intend that an applicant under each of these processes must prove eligible to hold a permit under the permit eligibility standard of section 510(c) of the Act. In the case of an application for a renewal of a permit, the burden of proof to find that an applicant is not eligible under section 510(c) rests with the regulatory authority, as provided under § 774.15(c)(2).

Paragraph (b)(3)(i) also would replace OSM's current policy that requires regulatory authorities to obtain permit eligibility recommendations on pending applications from AVS through a two-step process. Currently, the regulatory authority first uses the AVS to obtain a computer system-generated recommendation of permit eligibility. Second, to ensure that AVS data is reliable and up-to-date, OSM reviews the system recommendation and supporting data and uses AVS to provide a final recommendation to the regulatory authority.

In the future, instead of providing permit eligibility recommendations, we would use AVS to provide a variety of reports, including a report on applicants and violations on the operations they own or control, for use by the regulatory authority in reviewing applications and permits. Consistent with the principle of State primacy, regulatory authorities would then perform their own analyses of an applicant's legal identity information, permit history, and compliance history, and make permitting decisions based on their findings without receiving a recommendation from OSM. Our role would be to administer and operate the AVS and maintain the integrity of the system data. The State, subject to OSM oversight reviews, would have full authority in deciding whether to issue a permit. As discussed below at § 773.15(b)(3)(ii), the AVS report on the compliance history of the applicant and the AVS report on the applicant's owners and controllers will be used for distinctly different purposes.

Proposed paragraph (b)(3)(i)(A) provides that the regulatory authority will rely upon the applicant's compliance history, and the history of operations owned or controlled by the applicant, to make a permit eligibility finding under section 510(c) of SMCRA, unless there is an indication that the history of persons other than the applicant should be included as well. This provision has been expressly crafted to reflect the January 31, 1997, ruling in *NMA v. DOI*. The Appeals Court ruled that OSM could not apply section 510(c) of the Act to the individual owners or controllers of an

applicant. In other words, OSM could not deny permits under section 510(c) based upon the violations of those who controlled the applicant.

In proposed § 773.15, we have provided for regulatory authorities to obtain compliance history reports on persons in addition to the applicant for the purposes of determining permit eligibility. As described in (b)(3)(i)(G) below, when certain persons who own or control an applicant are, themselves, barred from mining, that prohibition could be sufficient to warrant denial of the permit application under provisions other than § 510(c). The regulatory authority may identify such persons by way of investigation or through other information available to the regulatory authority.

Proposed paragraphs (b)(3)(i)(B)(1) through (3) provide that if the applicant, or any surface coal mining operation owned or controlled by the applicant, has an outstanding violation, the regulatory authority may not approve the application unless one of the following apply:

- the applicant obtains a properly executed abatement plan or payment schedule that is approved by the regulatory authority with jurisdiction over the violation;
 - the violation is in the process of being abated;
 - the violation is the subject of a good faith administrative or judicial appeal contesting the validity of the violation;
- or
- the violation is subject to the presumption of NOV abatement under proposed § 773.16(b).

In addition, proposed paragraph (b)(3)(i)(C) requires that any application approved with outstanding violations must be conditioned in accordance with § 773.17(l).

These provisions describe the actions an applicant must take in order to obtain approval when the applicant, or an operation owned or controlled by the applicant, has outstanding violations. "Outstanding violation" is proposed to be defined at § 701.5 and means a violation notice that remains unabated or uncorrected beyond the abatement or correction period. A proposed change in the definition of "violation notice" will add a new violation type to the more typical violations under this review process. An applicant will be ineligible for a permit if the applicant has forfeited a performance bond and has failed to reimburse the regulatory authority for any costs in excess of the amount forfeited to achieve full reclamation under the applicable reclamation standards in § 800.50(d)(1). Similarly, in States with bond pools—a type of

bonding where many operators contribute to a combined fund—an applicant will not be eligible for a permit if a determination is made that additional reclamation or reimbursement is required beyond any existing reclamation or the amount contributed to the bond pool by the applicant. This is intended to provide relief to regulatory authorities from the harmful effects of bond forfeiture on their programs, especially from permittees responsible for repeated bond forfeiture. In instances where States have been required to complete reclamation at an additional cost to the State, an applicant would not be eligible if it failed to reimburse the State for the cost of reclamation in excess of the amount of the performance bond. The provisions proposed here are based, in part, upon the current regulation at § 773.15(b)(1), (b)(1)(i), and (b)(1)(ii).

Proposed paragraph (b)(3)(i)(D) is the first of two provisions that describe circumstances under which an applicant or other person will be found ineligible to hold a permit. This paragraph provides that OSM will serve a preliminary finding under 43 CFR § 4.1351 upon an applicant or operator if (1) the applicant or operator is found to have owned or controlled mining operations with a demonstrated pattern of willful violations of the Act and its implementing regulations, and (2) the violations are of such nature and duration that they result in irreparable harm to the environment, so as to indicate an intent on the part of the applicant or operator not to comply with the Act or implementing regulations.

Proposed paragraph (b)(3)(i)(E) provides that the applicant or operator may request a hearing under 43 CFR § 4.1350 *et seq.*, with the Office of Hearings and Appeals within 30 days of receipt of the preliminary finding. It further provides that, if the applicant or operator files a request for a hearing under 43 CFR 4.1350 *et seq.*, the Office of Hearings and Appeals will give written notice of the hearing to the applicant or operator and must issue a decision within 60 days of the filing of the request for a hearing.

Proposed paragraph (b)(3)(i)(F) provides that the decision of the administrative law judge may be appealed to the Interior Board of Land Appeals under procedures set forth in 43 CFR 4.1271 *et seq.* within 20 days of receipt of the decision.

We propose this amendment, which is based upon the current regulation at § 773.15(b)(3), to more fully state the administrative remedies and due process rights of persons preliminarily

found to be permanently ineligible for a permit. We believe a full description of the remedies and rights is important because regulatory authorities should be able to implement the second part of section 510(c) of the Act to permanently withhold the benefit of a surface coal mining permit from those persons who have committed the most flagrant violations and have not made a reasonable attempt to rectify the resulting environmental damage. However, we also recognize that upholding a preliminary finding under this proposed provision would have very serious consequences. We intend to ensure full due process and those rights are expressly addressed in the implementing regulation.

Proposed paragraph (b)(3)(i)(G) is the second of three provisions that describe circumstances under which an applicant will be found ineligible to hold a permit. It provides that an applicant will not be eligible for a permit if the applicant or anyone proposing to engage in or carry out operations on the proposed permit has been barred, disqualified, restrained, enjoined, or otherwise prohibited from mining under § 773.15(b)(3)(i)(D) or proposed § 846.16 by a Federal or State court. Proposed § 846.16, civil actions for relief, is discussed below in part 846.

We cannot deny a permit under section 510(c) of the Act based upon the violations of an applicant's owners or controllers at other operations. However, we can and should withhold permit approval if the person controlling the operation has been barred, disqualified, restrained, enjoined, or otherwise prohibited from mining by administrative or judicial decision.

We must seek to protect the benefit to hold a surface coal mining permit for those persons who have demonstrated compliance with statutory and regulatory requirements. In cases where a person is adjudicated to have demonstrated such disregard for the environment that the person has been barred, disqualified, restrained, enjoined, or otherwise prohibited from mining, the presence of such a person as an owner, controller, or agent of an applicant is sufficient basis for denying the permit. To decide otherwise would result in actions that would contravene the administrative or judicial decision issued against such a person.

Paragraph (b)(3)(ii) provides for the examination of the controllers of the applicant to determine if any controller is responsible for outstanding violations. The provisions at (b)(3)(ii) are intended to enable regulatory authorities to compel compliance to

rectify or otherwise resolve outstanding violations. We intend that the eligibility of its controllers based on outstanding violations will not impair the eligibility of the applicant. However, we also intend that regulatory authorities will identify persons who have failed to fulfill their environmental and debt obligations under the Act and its implementing regulations.

Proposed paragraph (b)(3)(ii)(A) provides that the regulatory authority will request a report from AVS to identify whether the owners or controllers of an applicant are also owners or controllers of a surface coal mining operation at the time a violation notice was issued and such violation notice remains outstanding. Unlike the report required for the applicant, the report required for owners and controllers will not be used as a basis to determine the eligibility of the applicant for a permit. Instead, it will be used to identify whether the owners or controllers of an applicant should be subject to investigation to determine whether remedial enforcement, including alternative enforcement actions, are appropriate to compel compliance with SMCRA and its implementing regulations. This provision establishes that OSM will no longer provide recommendations regarding the eligibility of applicants, either from AVS or from our quality assurance activities. Instead, we will provide reports of organized information generated from AVS. Regulatory authorities must use this information to formulate their own determinations.

Proposed paragraph (b)(3)(ii)(B) requires that the appropriate regulatory authority investigate each person and violation to determine whether alternative enforcement action is appropriate, as discussed below under part 846. OSM and the State regulatory authority will make the appropriate determination or referral for violations under their jurisdiction and must enter the results of each determination or referral into the AVS. Paragraph (b)(3)(ii)(B) enables regulatory authorities to compel the owners and controllers of applicants to fulfill their environmental and debt obligations where they are found to be responsible for violations. We believe that regulatory authorities must still compel compliance from these persons. To accomplish this, we are amending part 846 to provide for remedies available to regulatory authorities to compel compliance from the owners and controllers of applicants who are responsible for outstanding violations.

Proposed paragraph (b)(3)(ii)(C) provides that if the regulatory authority finds that an applicant has less than five years experience in surface coal mining operations or has owners or controllers that are linked to outstanding violations, the regulatory authority will consider the applicant to have insufficient or unsuccessful environmental compliance and therefore be subject to additional permit conditions under proposed § 773.18, which is discussed below. We propose to make clear distinctions between applicants that have demonstrated successful mining and reclamation experience, compliance with the Act and regulations, and those applicants that have not. As indicated above, we are interested in receiving comments specific to the proposed criteria (less than five years experience; owners or controllers linked to violations) for distinguishing among applicants eligible for permit approval in determining which applicants should be subject to additional permit conditions. We are also interested in receiving comments on what permit conditions under proposed § 773.18 would be appropriate.

Paragraph (b)(4) is unchanged from the current regulation, except to correct "September 30, 1994" to "September 30, 2004" at § 773.15(b)(4)(i)(C)(1). Paragraphs (c) and (d) are unchanged from the current regulation.

Proposed paragraph (e) provides for the final compliance review of an application. It requires that, after an applicant is determined eligible, but before the permit is issued, the regulatory authority will review any new information submitted or discovered during the permit application review. Proposed paragraph (e) further provides that, no more than three business days before permit issuance, the regulatory authority must again request a report from AVS on the applicant's history of compliance to ensure that the applicant is, or operations owned or controlled by the applicant are, not currently linked to any outstanding violations. This provision is based, in principle, on agreements with the States documented in Memoranda of Understanding (MOU) regarding AVS operation and current OSM policy regarding the frequency and timing for States to obtain permit eligibility recommendations prior to making permitting decisions. We also intend to incorporate other provisions contained in the MOUs that remain relevant to the regulatory program under this proposal, and eliminate the need for the MOUs.

This proposal also has the effect of removing the current provision at

§ 773.15(b)(2). This regulation refers to the certification of violation information provided by an applicant under § 778.14. This certification requirement is proposed to be removed from the regulations at proposed § 778.14. The current provision also refers to presumptions. One significant effect of the proposed redesign approach would be to eliminate the use of presumptions of ownership or control. We propose to eliminate the concept of the rebuttable presumption of ownership or control, discussed in more detail at § 778.5, and the effect of presumptions on permit eligibility, discussed above at § 773.15(b)(3).

With respect to current § 773.15(b)(2), the regulation is based upon the presumption of links to violations and is not in conformity with the conceptual basis of this proposal. The remaining portions of the current regulation at § 773.15(b)(2) regarding the status of violations disclosed under § 778.14 and the terms of permit issuance, have been incorporated into proposed § 773.15(b)(3)(i), discussed above, and § 773.18, discussed below.

E. Section 773.16—Permit Eligibility Determination

We propose to create § 773.16 to provide for permit eligibility determinations. These provisions represent the net effect of the regulatory authority's review of permit applications in the proposed amendments to § 773.15(b), discussed above in § 773.15.

Proposed paragraph (a) requires that the regulatory authority determines whether the applicant is eligible based upon the permit and compliance history of the applicant, operations the applicant owns or controls, and operations it owned or controlled provided for in proposed § 773.15(b).

Paragraph (a)(1) further provides that the regulatory authority will determine whether the application for a permit should be approved subject to additional permit conditions proposed in § 773.18, depending upon the applicant's permit and compliance history and the compliance history of the applicant's owners and controllers. These permit conditions are in addition to those routinely required of applicants under § 773.17. These additional conditions would be required for applicants that either fail to meet either the experience requirement or whose owners or controllers are found to be responsible for outstanding violations. We invite comments specifically addressing the criteria for distinguishing which applicants should be subject to

additional permit conditions and what type of conditions should be imposed.

Paragraph (a)(2) requires the regulatory authority to send the applicant written notice if found ineligible. The regulatory authority will include in the notice the reasons you were found ineligible and how to challenge a finding on the ability to control a surface coal mining operation.

Proposed paragraph (b) provides for the presumption of NOV abatement. The proposed provision states that, in the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation issued under § 843.12 or under a Federal or State program is being corrected to the satisfaction of the agency with jurisdiction over the violation where the abatement period for the notice of violation has not yet expired. Paragraph (b) further provides that permits approved utilizing the presumption of NOV abatement will be conditioned as required under proposed § 773.17(l). Paragraph (b) further provides that the presumption will not apply: (1) if the abatement period has expired; (2) to applicants subject to additional permit conditions under proposed § 773.18; (3) where evidence that the violation is not being abated is either set forth in the permit application or discovered; or (4) if the notice of violation is issued for nonpayment of reclamation fees or civil penalties.

Proposed paragraph (b)(3) provides the regulatory authority may not approve the application unless the applicant meets one of the criteria addressing the violation under paragraph § 773.15(b)(3)(i)(B).

F. Section 773.17—Permit Conditions

We have established in current regulations permit conditions that are routinely attached to all approved permits. In this proposal, we propose to amend paragraphs (h)(1) and (h)(2) and to add new conditions under paragraphs (i) through (m).

Proposed paragraph (h) provides that within thirty days after a cessation order is issued under § 843.11, or the State program equivalent, for operations conducted under the permit, the permittee must either submit to the regulatory authority updated or corrected information, current to the date the cessation order was issued, or notify the regulatory authority in writing that there has been no change since the submission of such information. This provision applies except where a stay of the cessation order is granted and remains in effect.

Proposed paragraph (h)(1) provides that a permittee or operator must

provide any new information needed to update or correct information previously submitted to the regulatory authority under § 778.13(c), (e), and (g). This amendment is proposed in order to revise the cross-references to § 778.13. To the extent that provisions at § 778.13 are revised, the cross-references here in § 773.17 are amended.

Proposed paragraph (h)(1)(i) provides that if the information required in a permit application under § 778.13(c), (e), and (g) has not been previously submitted to the regulatory authority, it must be submitted. We propose to amend the current provision such that "permit applicant" is changed to "permit application".

We propose to add paragraph (i) to § 773.17. It provides that the permittee, operator, or another person named in the application as having the ability to determine the manner in which the surface coal mining operation would be conducted will be considered the controllers of the permit.

Paragraph (j) provides that: all controllers are jointly and severally responsible for compliance with the terms and conditions of the permit and regulatory program; all controllers are subject to the jurisdiction of the Secretary of the Interior; and a breach of the responsibility for compliance with the terms and conditions of the permit and the regulatory program may result in a controller's individual liability.

Paragraph (k) provides that regulatory authorities may, at any time, through investigation, determine that additional persons are controllers. Paragraph (k) also provides that, after the permit is issued, if any controllers are identified by the regulatory authority or added by the permittee or operator, the new controller will be subject to the requirement to certify under proposed § 778.13(m), discussed below.

We propose to add this condition to all approved permits to accomplish several purposes. First, and most notably, all persons named in an application that have the ability to determine the manner in which the surface coal mining operation is conducted will be considered controllers of the permit. Under the redesigned approach, we are eliminating the use of rebuttable presumptions in the definitions of ownership and control. The effect of eliminating the use of the rebuttable presumption is that all persons identified as owners or controllers, or otherwise identified as having the ability to determine the manner in which operations are conducted, are all proposed to be control relationships with respect to the surface coal mining operation. This

means that certification by such persons in an application will establish their responsibility under the regulatory program. In addition, persons having the ability to determine the manner in which surface coal mining operations are conducted, however they may be identified, are made fully aware that they are subject to the jurisdiction of the Secretary of the Interior for the purposes of their compliance with all Federal and State terms and conditions under which their permit is issued.

Any breach of a controller's responsibility for compliance with the terms and conditions of the regulatory program may result in individual liability. We are enabling regulatory authorities to pursue individual liability through a variety of remedies, including pursuit of the suspension or revocation of a permit for failure to comply with the conditions under which a permit is issued, discussed below at proposed § 846.15.

We propose to add paragraph (l) to § 773.17. It provides that, as applicable, the permittee or operator must abate or correct any outstanding violation or payment, absent an administrative or judicial decision invalidating the violation. This provision conveys to the owners and controllers of a permittee that issuance of a permit does not defer the obligation of the permittee or operator to abate or correct any violation notice that may be outstanding at the time of permit issuance. This provision applies to applicants that have been approved for a permit that have also received the benefit of the presumption of NOV abatement, proposed at § 773.16(b). This provision is based upon the current regulation at § 773.20(c)(1)(ii), which is a permit condition. Therefore, we propose to move the provision from § 773.20(c)(1)(ii) to § 773.17(l).

We propose to add paragraph (m) to § 773.17. It provides that a permit will be subject to any other special permit conditions the regulatory authority determines are necessary to ensure compliance with the performance standards and regulations.

G. Section 773.18—Additional Permit Conditions

We propose to create § 773.18 to provide for the permit conditions required of applicants eligible under § 773.15(b) but that have less than five years experience in surface coal mining operations or whose controllers are responsible for outstanding violations and thus, have not demonstrated successful environmental compliance. These are permit conditions that the regulatory authority must require of

such applicants in addition to the standard permit conditions provided for in § 773.17. We propose these additional conditions to enable the regulatory authority to more closely monitor the operations of permittees with limited surface coal mining experience and whose owners and controllers have not demonstrated successful environmental compliance. We believe these permittees are a higher risk. If their operations are unsuccessful, their reclamation obligations would default to the regulatory authority. While the higher risk permittees are entitled to hold a permit under the redesigned approach, these permittees should be subject to greater scrutiny until they and their owners and controllers demonstrate their ability to comply with statutory and regulatory requirements with respect to their surface coal mining and reclamation operations.

These proposed distinctions among applicants are based on comments received during the public outreach preceding the development of this proposal. Certain comments stressed the need for some form of criteria to distinguish between applicants more likely to succeed and those that are not. It was suggested that we consider giving an advantage to applicants with demonstrated successful compliance records in the permitting process. We invite suggestions for other criteria that may be used to distinguish between proposed operations that are likely to succeed and those that are not. Also, we invite comments on how the proposed criteria should be applied. For example: would the experience criterion apply to all persons intending to engage in or carry out surface coal mining operations, including the owners and controllers of an applicant as well as to the applicant; would the experience criterion mean five consecutive years; and would the experience of a parent company count towards the experience of an applicant?

Proposed paragraph § 773.18(a) provides that a permittee's failure to comply with any additional permit condition provided for in this section may result in a regulatory finding that the permittee is unable or unwilling to comply with its mining and reclamation plan. Paragraph (a) further provides that such a finding constitutes adequate reason for the regulatory authority to promptly issue an order for the permittee to show cause why the permit should not be suspended or revoked under proposed § 846.15.

Proposed paragraph (b) provides that the permittee must pay all civil penalties assessed under part 845 within 30 days of the date of a final

order of the Secretary or State counterpart. While all permitted operations are expected to pay civil penalties in a timely manner, we believe that for higher risk operations, untimely payment of civil penalties is an indicator of the potential lack of success of the operation.

Proposed paragraph (c) provides that the permittee must take all possible steps to abate any outstanding violation before the expiration of the abatement period. As with the payment of civil penalties, all permitted operations are expected to abate violations in a timely manner. However, we believe that for higher risk operations, untimely abatement is another indicator of the potential lack of success of the operation.

Proposed paragraph (d) provides that the permittee must maintain continuous and uninterrupted compliance with any provision of an abatement plan, payment schedule or other settlement agreement. We readily enter into agreements with permittees, operators, or other persons to abate violations or to fulfill financial obligations where they are unable to abate or pay within the required time limits. We count on the good faith of these persons to adhere to the abatement plan or payment schedule or other terms of an agreement. In the case of the higher risk permittee, we believe that a lapse in compliance with an abatement plan, payment schedule, or other settlement agreement is yet another indicator of the potential lack of success of the operation.

H. Section 773.20—Improvidently Issued Permits: General Procedures

Proposed paragraph (a) provides for the permit review. The provision states that a regulatory authority which has reason to believe that it improvidently issued a surface coal mining and reclamation permit must review the circumstances under which the permit was issued, using the criteria in paragraph (b) of this section. Paragraph (a) further provides that, when the regulatory authority finds that the permit was improvidently issued, it must comply with paragraph (c) of this section. The language is unchanged from the current regulation.

At paragraph (b), which provides for the review criteria to determine whether a permit has been improvidently issued, the numerical identifier (1) in the paragraph is removed. The heading and language of the current regulation are unchanged.

Paragraph (b)(1)(i) of the current regulation would be re-numbered (b)(1). The language is unchanged from the current regulation.

Paragraph (b)(1)(i)(A) of the current regulation would be re-numbered (b)(1)(i) and amended. The phrase “unabated violation” would be changed to “outstanding violation.” This change is proposed because a regulatory definition for “outstanding violation,” proposed at § 701.5, defines a more inclusive set of violations and, as such, is more applicable to the circumstance described in the provision where a regulatory authority finds it should not have issued a permit.

Paragraph (b)(1)(i)(B) of the current regulation would be re-numbered (b)(1)(ii). In addition, we propose to add a provision to follow (b)(1)(ii) which also describes a circumstance where a regulatory authority finds it should not have issued a permit. Therefore, the last word in paragraph (b)(1)(ii) is proposed to be changed from “and” to “or.”

We propose to add paragraph (b)(1)(iii) to § 773.20 to provide that the failure of an applicant to disclose in its application any other relevant information that if properly disclosed at the time of the initial application would have made the applicant ineligible, is also cause for a finding that the permit was improvidently issued. We propose to add this provision to § 773.20 in keeping with the emphasis placed on permit information. The amendment is also consistent with the provisions of the MOUs with States regarding AVS operation that provide for States to require the resolution of inaccurate and incomplete application information. In this proposal, “permit information” means information required from applicants and permittees.

Paragraph (b)(1)(ii) in the current regulation would be re-numbered (b)(2). The language of the provision is unchanged from the current regulation.

Paragraph (b)(1)(ii)(A) would be re-numbered (b)(2)(i) and amended. The word “unabated” is changed to “outstanding” for the same reasons as stated above in proposed paragraph (b)(1)(i) of this section.

Paragraph (b)(1)(ii)(B) would be re-numbered (b)(2)(ii). The language in the provision is unchanged from the current regulation.

Paragraph (b)(1)(iii) would be re-numbered (b)(3). Paragraph (b)(3) also would be amended. The word “person” is changed to “operation.” We propose this change because the regulatory definition of “person” at § 700.5 includes “an individual.” The word “operation” is more in keeping with this proposal’s approach to permit eligibility.

Paragraph (b)(2), including paragraphs (b)(2)(i) and (b)(2)(ii), would be removed from § 773.20. To the extent that

§ 773.25 is amended in this proposal and §§ 773.20(b)(2) and (3) already provide for the same regulations, we believe the current § 773.20(b)(2) is an unnecessary duplication of provisions.

We propose to amend paragraph (c) of § 773.20. As discussed below in the individual provisions within paragraph (c), we propose to amend existing provisions and to add provisions to address the failure of an applicant to disclose accurate and complete information. These revisions address permit information, one of the four key elements of this proposal.

Proposed paragraph (c)(1) provides that a regulatory authority which finds that a permit was improvidently issued must use one or more of the three remedial measures that follow in the succeeding paragraphs proposed at §§ 773.20(c)(1)(i) through (c)(1)(iii). Paragraph (c)(1) is proposed to be amended to remove what we believe to be unnecessary language from the provision. As a result, proposed paragraph (c)(1) is more succinct.

Proposed paragraph (c)(1)(i) describes the first remedial measure. It provides for a plan to abate the violation, or a schedule to pay the penalty or fee, or that the regulatory authority require the permittee to correct the inaccurate information or provide the incomplete information. We propose to amend this provision by removing “with the cooperation of the responsible agency, the permittee, and persons owned or controlled by the permittee” from the provision. We believe this language is unnecessary to the provision. Instead, we propose to add “or require the permittee to correct the inaccurate information or provide the incomplete information” at the end of the provision. This change adds inaccurate or incomplete information to the criteria under which the regulatory authority may find a permit was improvidently issued. As with certain other provisions in this proposal, the concept governing sanctions for providing inaccurate and incomplete information is based upon provisions contained in the MOUs with State regulatory authorities regarding the operation of the AVS.

Paragraph (c)(1)(ii) in the current regulation would be removed from § 773.20. It provides for the imposition of a permit condition requiring the abatement of the violation or payment of the penalty or fee. We believe this requirement is more appropriate to the regulations governing permit conditions. Thus, we have proposed this provision as § 773.17(j).

Paragraph (c)(1)(iii) in the current regulation would be re-numbered (c)(1)(ii) and is the second remedial

measure. Proposed paragraph (c)(1)(ii) is largely a reorganization of current (c)(1)(iii) and provides that the regulatory authority may suspend the permit until one or more of three conditions are met. The three conditions are provided for in proposed paragraph (c)(1)(ii).

Proposed paragraph (c)(1)(ii)(A) provides that permit suspension will continue until the violation is corrected to the satisfaction of the regulatory authority or other issuing authority with jurisdiction over the violation. This provision is essentially a restatement of the first part of the condition stated in the current paragraph (c)(iii).

Proposed paragraph (c)(1)(ii)(B) provides that permit suspension will continue until the penalty or fee is paid. This provision is essentially a restatement of the second part of the condition stated in the current regulation at paragraph (c)(iii).

Proposed paragraph (c)(1)(ii)(C) provides that permit suspension will continue until the inaccurate or incomplete information is corrected or provided. We propose to add paragraph (c)(1)(iii) to be internally consistent with proposed §§ 773.20(b)(1)(iii) and (c)(1)(i) that add inaccurate or incomplete information to both the reasons for the suspension of a permit and the conditions under which the suspension could be lifted or terminated.

Paragraph (c)(1)(iv) in the current regulation would be re-numbered (c)(1)(iii) and is the third remedial measure. Proposed paragraph (c)(1)(iii) provides that the regulatory authority may rescind the permit under the provisions in § 773.21, which is also proposed to be amended. We propose to add the reference to § 773.21 to specifically reference the permit rescission procedures contained in that section.

Paragraph (c)(2) of § 773.20 is unchanged from the current regulation.

I. Section 773.21—Improviently Issued Permits: Rescission Procedures

We propose to amend the rescission procedures for improviently issued permits at § 773.21.

The proposed introductory paragraph at § 773.21 provides that a regulatory authority which, under § 773.20(c)(1)(iii), elects to rescind an improviently issued permit, must serve a notice of proposed suspension and rescission on the permittee and individuals who have the ability to control the permittee. The notice must include the reasons for the regulatory authority's finding under proposed § 773.20(b). We propose two revisions to the current regulation. We propose to change the cross-reference

from § 773.20(c)(1)(iv) to § 773.20(c)(1)(iii). We propose to add the phrase, "and individuals who have the ability to control the permittee" to the introductory paragraph. This proposal is consistent with the redesigned approach because the individual owners or controllers of an applicant or permittee that are responsible for outstanding violations will be treated separately from the applicant or permittee. The notification provision means that the permittee and the individuals that have the ability to control the permittee will be served the notice of proposed suspension and rescission.

Proposed paragraph (a) provides for the automatic suspension and rescission of a permit. The provision states that, after a specified period of time, not to exceed 90 days, the permit automatically will become suspended. Further, not more than 90 days thereafter it would be rescinded, unless within those periods the permittee submits proof, and the regulatory authority finds, consistent with the provisions of § 773.25, that one or more of the provisions in paragraphs (a)(1) through (a)(4) are met. The current regulation at § 773.21(a) is unchanged.

Proposed paragraph (a)(1) provides that the regulatory authority will not suspend or revoke the permit if the finding of the regulatory authority under § 773.20(b) of this part was erroneous. This provision is unchanged from the current regulation.

Proposed paragraph (a)(2) provides that the regulatory authority will not suspend or revoke the permit if the violation has been abated, the penalty or fee paid, or the information corrected to the satisfaction of the responsible agency. This provision is proposed to be amended such that the phrase, "or the information corrected" has been added. As we have previously indicated, the MOUs with States regarding AVS operation require States to resolve inaccurate and incomplete application information. Therefore, the amendment proposed at paragraph (a)(2) is also consistent with our intent to eliminate the need for the MOUs.

Proposed paragraph (a)(3) provides that the regulatory authority will not suspend or revoke the permit if the violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule that is being met to the satisfaction of the responsible agency. This provision in § 773.21 (a)(3) is unchanged from the current regulation.

Proposed paragraph (a)(4) provides that the regulatory authority will not suspend or revoke the permit if the

permittee and all operations owned or controlled by the permittee are no longer responsible for the violation, penalty, or fee, or for providing the information. In this provision, "operations" substitutes for "persons" and "or for providing the information" is added.

Proposed paragraph (a)(5) provides that the regulatory authority will not suspend or revoke the permit if the information is subject to a pending challenge under § 773.24. In this provision, the phrase "the information is subject to a pending challenge under § 773.24" is added.

Paragraph (b) provides for the cessation of operations following permit suspension or rescission and would be amended only slightly from the current regulation, but it is a meaningful change. The words, "and reclamation" are removed from the activities the permittee must cease after permit suspension or rescission so that it is clear that reclamation activities do, in fact, continue following the suspension or revocation of an improviently issued permit.

J. Section 773.22—Identifying Entities Responsible for Violations

We propose to withdraw current provisions in § 773.22 in their entirety and replace them with provisions for identifying entities responsible for violations. The current provisions in § 773.22 are centered on presumptions of ownership or control to create links based on common control between applicants and operations with violations. Thus, they have no meaning in the proposed redesigned approach to permit information, permit eligibility, investigation, and alternative enforcement.

Instead, we propose to use § 773.22 to establish provisions for regulatory authorities to identify in AVS outstanding violations attributable to applicants, permittees, and the controllers of surface coal mining operations. The concept governing the identification of persons responsible for violations is based upon provisions contained in the MOUs with State regulatory authorities regarding the operation of the AVS. By incorporating these provisions into this proposal, we intend to eliminate the need for the MOUs.

In the introductory paragraph of § 773.22, we propose to make clear that all persons who own or have the ability to control surface coal mining operations as a permittee, operator, owner, controller, or agent have an affirmative duty to comply with the Act, regulatory program, and approved

permit. The introductory statement sets the stage for the provisions that address the alternative to successful environmental compliance. In § 773.22, we intend to provide for the identification of persons in AVS that are responsible for violations. In addition, we intend that OSM and State regulatory authorities are obligated to enter and maintain in AVS their respective violation information so that the purposes of the Act may be effectively implemented.

Proposed paragraph (a) provides that OSM or the State regulatory authority with jurisdiction over the violation will investigate each outstanding violation of the regulatory program to determine the identity of those responsible for preventing and correcting the violation.

Proposed paragraph (b) provides that each owner, controller, principal, or agent responsible for preventing or ensuring abatement or correction of the violation will be designated in the AVS as a person OSM or the State regulatory authority may compel to comply with the Act and other applicable laws and regulations, as necessary, to correct the violation. Paragraph (b) is proposed so that persons identified as a result of the investigation in paragraph (a) are so designated in the AVS as responsible for the violation.

Proposed paragraph (c) provides that OSM and State regulatory authorities must enter into AVS all violations issued under the Act or the regulatory program no more than 30 days after the abatement or correction period has expired. It further provides that OSM and State regulatory authorities must maintain the accuracy and completeness of this information to reflect the most recent changes in status, such as abatement, correction, termination, and administrative or judicial appeal. Paragraph (c) is proposed to convey our commitment to maintain the accuracy and completeness of Federal violation data in AVS and to require that State regulatory authorities maintain the accuracy and completeness for State violation data. The integrity of Federal and State violation data is critical to the effective performance of the computer system and is therefore critical to our implementation of the regulatory program.

Proposed paragraph (d) provides that OSM and the State regulatory authorities must either pursue the appropriate alternative enforcement action under part 846 against the permittee, operator, or an owner, controller, or agent, to compel correction of the violation, or make a determination that referral for alternative enforcement action is not

warranted. Paragraph (d) further provides that the existence of a performance bond is not the sole basis for a regulatory authority's determination that alternative enforcement action is not warranted. Paragraph (d) would enable regulatory authorities, as a result of their investigation under proposed paragraph (a), to use the proposed alternative enforcement provisions to make, as appropriate, a determination under proposed § 846.12, 846.14, or 846.15, or a referral for prosecution under proposed § 846.11 or 846.16.

K. Section 773.23—Review of Ownership or Control and Violation Information

We propose to remove the provisions in § 773.23 from our regulations that provide for the review of ownership or control and violation information. The current provisions are centered on ownership or control to create links based on presumptions of common control between applicants and operations with violations. Insofar as we propose to revise definitions for "ownership" and "control" and eliminate the use of rebuttable presumptions, the current provisions in this section have no meaning in the proposed redesign.

L. Section 773.24—Procedures for Challenging a Finding on the Ability to Control a Surface Coal Mining Operation

We propose to revise the provisions at § 773.24 to provide for challenges to a finding on the ability to control a surface coal mining operation. We believe that the redesigned approach entitles persons, under certain conditions, to challenge whether they have the ability to control a surface coal mining operation. Unlike the current regulations at § 773.24, the proposed provisions are not centered on the use of the rebuttable presumption, jurisdiction based upon whether entity relationships are shown in AVS, ownership or control links, or the existence of a violation.

To further contribute to the clarity of § 773.24, we propose to add headings to improve the organization of the provisions. We also propose to amend the language and to remove references to "ownership or control links" and to add instead "a finding on the ability to control a surface coal mining operation." The provisions would be organized under the following headings: (1) who may challenge; (2) how to submit a written challenge; (3) the issuance of a written decision; (4) service procedures; (5) the relevant

procedures for appeal; and (6) a limitation on the use of the provisions.

We propose to change the title of § 773.24 from "Procedures for challenging ownership or control links shown in AVS" to "Procedures for challenging a finding on the ability to control a surface coal mining operation." The proposed change of the section's title illustrates the change in the focus of these procedures.

Proposed paragraph (a) provides for who may challenge a finding on the ability to control a surface coal mining operation. It states that any person listed as owning or controlling a surface coal mining operation in a pending permit application, or who OSM or a State regulatory authority finds as an owner or controller, may, prior to providing certification under proposed § 778.13(m), challenge the listing or finding in accordance with paragraphs (b) through (d) of proposed § 773.25. We propose to change the phrase, "[a]ny applicant or other person" to "[a]ny person" for succinctness. The definition of "person" at § 700.5 includes all entities that are entitled to make use of these procedures.

We propose to amend the current provision to clarify that persons who wish to challenge a finding on their ability to control a surface coal mining operation are entitled to do so, either (1) while the relevant application is pending before the regulatory authority, or (2) after OSM or the regulatory authority has found that a person has the ability to control an operation but was not identified to the regulatory authority either by the applicant or later by the permittee. We believe that once a person certifies, under proposed § 778.13(m), to being a controller of the applicant and under the jurisdiction of the Secretary and the regulatory program, that any attempt to challenge a finding of control is without merit.

We believe that while an application is pending before the regulatory authority, a person has sufficient knowledge and opportunity to challenge its ability to control the proposed operation. In the case of persons that OSM or the regulatory authority discovers have the ability to control the operation after a permit is issued, we believe such persons are entitled to challenge the finding. However, we also believe that such persons and the permittee are also subject to investigation, under proposed § 773.15(b)(1)(i), as to the circumstances surrounding the permittee's failure to disclose the controller.

Proposed paragraph (b) explains how a person may challenge a finding on the ability to control a surface coal mining

operation. It states that any person who wishes to challenge his status in the application, or a finding that he has or had the ability to control a surface coal mining operation, must submit a written explanation of the basis of the challenge to the agency with jurisdiction over any existing violations, or absent a violation, to the agency with jurisdiction over the pending application. The written challenge should be accompanied by supporting evidence and supporting documents.

Proposed paragraph (c) provides for the agency's written decision in response to a challenge of a finding on the ability to control a surface coal mining operation.

Proposed paragraph (c)(1) provides that the agency with jurisdiction will review any information submitted under paragraph (b) and will issue a written decision on whether the person filing the challenge has the ability to control the relevant surface coal mining operation. Proposed paragraph (c)(1) further provides that the agency issuing the decision will notify the person and any regulatory authorities with an interest in the challenge. The agency issuing the decision is also required to update, as necessary, the relevant information in AVS. By way of this provision, we intend that the agency with jurisdiction will issue a written decision, as a matter of record, on each challenge made under these procedures. In addition, we intend that each regulatory authority with an interest in the challenge should receive a copy of the decision. We also intend that the agency issuing the decision will update AVS, as necessary, should the decision affect information contained in the computer system. In keeping with our commitment to maintain the integrity of the system's data, we believe that it is important to require any necessary updates to the information in AVS under these procedures.

Proposed paragraph (c)(2) requires that the agency issuing the decision must serve a copy of the decision on the person by certified mail, or by any means consistent with the rules governing service of a summons and compliant under Rule 4 of the Federal Rules of Civil Procedure, or the equivalent State counterpart. Proposed paragraph (c)(2) further provides that service will be complete upon delivery of the notice or of the mail and will not be considered incomplete because of a refusal to accept.

Proposed paragraph (c)(3) provides for the appeals procedures afforded to persons who use these procedures. We propose that any person who is or may be adversely affected by a decision under paragraph (c)(1) may appeal the

agency's decision to the Department of the Interior's Office of Hearings and Appeals within 30 days of service of the decision in accordance with 43 CFR § 4.1380 *et seq.*, or the equivalent State counterparts. Paragraph (c)(3) further provides that the decision will remain in effect during the pendency of an appeal, unless temporary relief is granted in accordance with 43 CFR § 4.1386, or the equivalent State counterpart.

Proposed paragraph (d) provides that a permittee or operator may not use these procedures to challenge their joint and several liability to pay reclamation fees under section 402 of the Act. We have proposed this provision to clarify that challenges to the ability to control a surface coal mining and reclamation operation does not include the ability to challenge the joint and several liability of permittees and operators to pay reclamation fees.

M. Section 773.25—Standards for Challenging a Finding or Decision on the Ability to Control a Surface Coal Mining Operation

We propose to revise the provisions at § 773.25 to provide standards for challenging a finding on the ability to control a surface coal mining operation. We propose to change the title of § 773.25 from "Standards for challenging ownership or control links and the status of violations" to "Standards for challenging a finding or decision on the ability to control a surface coal mining operation" to be consistent with the redesigned approach.

Proposed paragraph (a) provides that the provisions of § 773.25 apply whenever a person exercises a right, under the provisions of §§ 773.20, 773.21, or 773.24 or under the provisions of part 775, to challenge a decision that he or she has the ability to control a surface coal mining operation. We are amending paragraph (a) to delete the reference to § 773.23. Section 773.23 would be deleted from our regulations as unnecessary within the proposed redesign. The phrase, "ownership or control link" is deleted because the definition for the phrase is proposed to be deleted.

Proposed paragraph (b) provides for agency responsibility in these provisions. Paragraph (b) includes four subparagraphs as follows.

Proposed paragraph (b)(1) provides that the State regulatory authority which cites a violation must make a decision on a challenge to a finding of the ability to control surface coal mining operations with respect to a State-issued citation. The proposed provision is based upon the current regulation at

§ 773.25(b)(1)(i). Current § 773.25(b)(3) assigns exclusive jurisdiction to OSM for challenges to information shown in AVS.

We propose to change the focus of the challenge procedures to whether a person has the ability to control a surface coal mining operation. In addition, we propose to remove the condition that a challenge involve a pending application. We believe the standards in proposed § 773.25 should apply regardless of whether an application is pending.

Proposed paragraph (b)(2) provides that OSM must make a decision on a challenge to a finding on the ability to control surface coal mining operations with respect to Federal violation notices. The proposed provision is based upon the current regulation at § 773.25(b)(2) but is restated within the context of a challenge of a person's ability to control a surface coal mining operation.

Proposed paragraph (b)(3) provides that the regulatory authority that processed the application or that issued the permit must make the decision on a challenge to a finding on the ability to control a surface coal mining operation where there is no outstanding violation. The proposed provision is based upon the current regulation at § 773.25(b)(2)(ii), but like proposed (b)(2), it is restated within the context of a challenge of a person's ability to control a surface coal mining operation.

Proposed paragraph (b)(4) provides that the State or Federal agency with jurisdiction over the violation determines whether the violation has been abated or corrected. The proposed provision is based upon the current regulation at § 773.25(b)(2)(iv) but is amended to streamline the language of the current provision.

Proposed paragraph (c) provides for the evidentiary standards that apply under § 773.25. The evidentiary standards are also found at paragraph (c) in the current regulation.

Proposed paragraph (c)(1) provides that in any formal or informal review of a challenge to a finding, the responsible agency will issue a written decision if it determines that the ability to control exists or existed during the relevant period. We propose to add this provision to § 773.25 to expressly require a written decision from the responsible agency.

Proposed paragraph (c)(2) provides that a person challenging a finding on his or her ability to control the relevant surface coal mining operation will have the burden of proving by a preponderance of evidence, with respect

to any relevant time period, that he or she did not have the ability to control the surface coal mining operation. Since we propose to remove the rebuttable presumption and "ownership or control link" from the regulations, we believe that it follows that the requirement for a *prima facie* determination in these standards is no longer necessary.

Proposed paragraph (c)(3) provides that in meeting the burden of proof set forth in paragraph (c)(2), the person challenging the finding on his or her ability to control the relevant surface coal mining operation must present reliable, credible, and substantial evidence and any supporting explanatory materials. Paragraph (c)(3) further provides that such evidence and materials submitted to the appropriate jurisdiction may include those described in the paragraphs that follow. The proposed provision is based upon the current regulation at § 773.25(c)(2), but it no longer requires the existence of an ownership or control link for the reasons previously stated in this section.

Proposed paragraph (c)(3)(i) provides examples of evidence and materials that may be submitted to the agency responsible for issuing the written decision under these provisions.

Proposed paragraph (c)(3)(i)(A) provides that such evidence may include notarized affidavits containing specific facts concerning the scope of the duties actually performed by the person; the beginning and ending dates of the person's control of the applicant, permittee, operator, or violator; and the nature and details of any transaction creating or severing the ability to control the applicant, permittee, operator, or violator. The proposed provision is based on the current regulation at § 773.25(c)(3)(i)(A) but is restated to be consistent with proposed provisions.

Proposed paragraph (c)(3)(i)(B) provides that such evidence may include certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records. The proposed provision is based on the current regulation at § 773.25(c)(3)(i)(B) but is restated to be consistent with the preceding proposed provisions.

Proposed paragraph (c)(3)(i)(C) provides that such evidence may include certified copies of documents filed with or issued by any State, Municipal, or Federal governmental agency. The proposed provision is based on the current regulation at § 773.25(c)(3)(i)(C) but is restated to be consistent with the preceding proposed provisions.

Proposed paragraph (c)(3)(i)(D) provides that such evidence may include an opinion of counsel when supported by (1) evidentiary materials; (2) a statement by counsel that he or she is qualified to render the opinion; and (3) a statement that counsel has personally and diligently investigated the facts of the matter or, where counsel has not so investigated the facts, a statement that such opinion is based upon information which has been supplied to counsel and which is assumed to be true. The proposed provision is based on the current regulation at § 773.25(c)(3)(i)(C) but is restated to be consistent with the preceding proposed provisions.

Proposed paragraph (c)(3)(ii) provides that evidence and materials presented in proceedings before any administrative or judicial tribunal reviewing the decision of the responsible agency must be admissible under the rules of the reviewing tribunal. The proposed provision is unchanged from the current regulation at § 773.25(c)(3)(ii).

Proposed paragraph (d) provides that, following any determination by a regulatory authority, or any decision by an administrative or judicial tribunal reviewing such determination, the regulatory authority will review the information in AVS to determine if it is consistent with the determination or decision. Paragraph (d) further provides that if the regulatory authority finds that the information in AVS is not consistent with the determination or decision, it will promptly revise the AVS information to reflect the determination or decision.

N. Section 774.10—Information Collection

We propose to amend the provisions for information collection in part 774, Revision, Renewal, and Transfer, Assignment or Sale of Permit Rights. Consistent with the Paperwork Reduction Act, in proposed paragraph (a) we note that OMB has approved the information collection requirements of part 774. Paragraph (a) further provides that this information will be used by regulatory authorities to determine if the applicant meets the requirements for revision, renewal, transfer, sale, or assignment of permit rights and that persons must respond to obtain a benefit. Paragraph (a) further provides that a Federal 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 clearance number for this part is 1029-NEW.

In proposed paragraph (b), we estimate that the public reporting burden for this part will average 32 hours per response, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Paragraph (b) further provides that comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing the burden, may be sent to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 210, 1951 Constitution Avenue, 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. Please refer to OMB Control Number 1029-NEW in any correspondence.

We propose to amend § 774.10 to indicate the authority under which we may require collection of information for part 774. This section conforms to OMB requirements to publish the estimated time needed to collect information under certain regulatory provisions. We invite comments on the estimated average number of hours required to fulfill the information collection requirements under part 774.

O. Section 774.13—Permit Revisions

We propose to create a paragraph (e) at § 774.13 to provide for a permittee to report certain ownership or control changes to the regulatory authority. Proposed paragraph (e) requires a permittee to report changes of officers, owners, or other controllers where the permittee is not required to obtain the approval of the regulatory authority for the change under proposed § 774.17(a)(2). Changes of persons under proposed § 774.13(e) would not be subject to the certification provision under proposed § 778.13(m). However, a permittee must report such a change to the regulatory authority within 60 days after it occurs.

P. Section 774.17—Transfer, Assignment, or Sale of Permit Rights

We propose to amend the provisions at § 774.17, regarding transfer, assignment, or sale of permit rights. The proposed revisions include a reorganization of the provisions in this section and various amendments to the regulatory language. We have found that there is great variance among the State regulatory authorities in the implementation of their counterparts to these regulations. In this proposal, we

intend to further clarify the use of these regulations, including distinguishing among those instances where a new permit is required and those that only require approval for modification of the existing permit information.

In proposed § 774.17, we have incorporated the effect of the change in the definition of "successor in interest" proposed in § 701.5. We believe that the proposed definition and the corresponding procedural changes proposed here in § 774.17(d) conform more to the statutory requirements for a successor in interest at section 506(b) of SMCRA. Section 506(b) of SMCRA covers the conditions under which a successor in interest may continue mining operations on an approved permit. Section 506(b) requires that the successor in interest obtain bond coverage and apply for a new permit within 30 days of succeeding to the interest of an existing permittee. The procedural change incorporates additional requirements, notably the permit eligibility requirements proposed at §§ 773.15 and 773.16, and the information and certification requirements proposed at §§ 778.13 and 778.14.

The proposed heading at paragraph (a), and paragraphs (a)(1) and (a)(2) that follow are newly-proposed provisions. As indicated above, we propose to add these provisions to § 774.17 to further clarify who must obtain approval of a transfer, assignment, or sale of permit rights.

Proposed paragraph (a) contains two significant changes. First, it seeks to resolve the identity of the applicant in the case of a transfer, assignment, or sale of permit rights. We believe that the permittee has the obligation to obtain the approval of a transfer, assignment, or sale of permit rights whenever there is a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the regulatory authority. Second, although all changes in legal identity or identification of interests require notification to the regulatory authority under proposed § 774.13(e), only those changes that require certification under proposed § 778.13(m) will require written approval from the regulatory authority under this section.

Proposed paragraph (a)(1) provides that the permittee is always the applicant for a transfer, assignment, or sale of rights granted under a permit. The proposed provision further provides that the permittee has the burden of establishing that the application for transfer, assignment, or

sale of permit rights complies with the requirements of the regulatory program.

Proposed paragraph (a)(2) provides that the permittee must obtain approval of a transfer, assignment, or sale of permit rights. We believe that a change or addition of an operator, officer, owner, controller, permittee, or other person on a permit constitutes a change of the rights granted under that permit. The permittee must obtain approval of any transaction for a transfer, assignment, or sale of permit rights, by which the rights granted under a permit are transferred, assigned, or sold for any length of time, to a person not identified on the currently approved permit. The requirement for approval only applies for those whom certification under proposed § 778.13(m) will be required.

Proposed paragraph (b) specifies what information is required in the application for a transfer, assignment, or sale. We propose to create a heading for paragraph (b) to identify these provisions. Proposed paragraph (b) provides that the permittee must provide the regulatory authority with an application for approval of the proposed transfer, assignment, or sale. As proposed, the application must include the information specified in the four paragraphs that follow. This provision is proposed as a consolidation and amendment to the current regulation at § 774.17(b), (b)(1), and (b)(3).

Proposed paragraph (b)(1) provides that the name and address of the existing permittee and the relevant permit number must be provided in the application. This provision is proposed as an amendment to the current regulation at § 774.17(b)(1)(i). The phrase, "or other identifier" is proposed to be deleted because we believe that for the transfer, assignment, or sale of rights granted under a permit, an identifier other than the permit number is irrelevant.

Proposed paragraph (b)(2) provides that a brief description of the proposed action requiring approval must be provided in the application. This provision is in the current regulations at § 774.17(b)(1)(ii). The proposed language is unchanged from the current provision.

Proposed paragraph (b)(3) provides that the legal, financial, compliance, and related information and violation information required under §§ 778.13 and 778.14 for the person(s) proposed to receive permit rights by way of transfer, assignment, or sale must be provided in the application. This provision is the current regulation at § 774.17(b)(1)(iii) and is proposed to be amended. We propose to amend "Part 778" to "§§ 778.13 and 778.14." We propose to

amend "applicant for approval" to "person(s) proposed to receive permit rights by way of." The latter change is proposed to be internally consistent within the context of the provisions proposed in paragraph (a).

Paragraph (b)(4) provides that the application contain the bonding company's written acceptance of those proposed to gain permit rights. Paragraph (b)(4) is proposed as a new provision. This change is based on comments received from bonding companies during the outreach phase of this rulemaking.

The proposed heading and provisions for proposed paragraph (c) are newly-created. This section explains how the regulatory authority will review and approve applications for a transfer, assignment, or sale of permit rights. We are proposing that, as with all other permitting processes, approval of a transfer, assignment, or sale of permit rights should require a written finding by the regulatory authority and should be subject to the permit eligibility review requirements proposed in §§ 773.15 and 773.16. We propose to remove prior approval from the requirements under these procedures. Based upon our experience with this regulation, we believe that to require prior written approval of a transfer, assignment, or sale of permit rights is unnecessary. In most cases the change would have already occurred prior to the request for regulatory authority approval. The provisions in paragraph (c) also reflect the incorporation of concepts in related provisions proposed at part 846 into the procedures for transfer, assignment, or sale of permit rights.

Proposed paragraph (c)(1) provides that the regulatory authority must issue a written finding either approving or denying the transfer, assignment, or sale.

Proposed paragraph (c)(2) provides that the regulatory authority must evaluate each proposed transfer, assignment, or sale to determine whether a new permit or bond is required pursuant to the regulatory program requirements.

Proposed paragraph (c)(3) provides that the regulatory authority must add the conditions specified in proposed § 773.18 to the permit, if the transfer, assignment, or sale is to owners or controllers responsible for outstanding violations.

Proposed paragraph (c)(4) provides that the regulatory authority must not approve the transfer, assignment, or sale if applicant is ineligible for a permit under proposed §§ 773.15(b)(2) or 773.16.

Proposed paragraph (c)(5) provides that the regulatory authority must not approve the transfer, assignment, or sale if the proposed recipient is enjoined or otherwise prohibited from mining under § 846.16 or by a Federal or State court.

Proposed paragraph (d) provides for the procedures governing a successor in interest. The provisions in paragraph (d) and paragraphs that follow are based upon the current regulations at §§ 774.17(c), (d), and (f). However, the proposed provisions in paragraph (d) also reflect revisions based on what we believe conforms more with the requirements of section 506(b) of SMCRA.

Proposed paragraph (d)(1) requires a successor in interest to apply for and obtain a new permit in instances where the current permittee gives up all rights granted under the existing permit. It further requires that an existing permittee cannot give up all of its rights granted under a permit until the successor in interest is approved by the regulatory authority. Section 506(b) of the Act requires that a successor in interest obtain a new permit. We therefore propose to add this requirement in these procedures.

Proposed paragraph (d)(2) consists of the requirements a successor in interest must meet to continue operations under the existing permit. Paragraph (d)(2) is largely based upon the current regulation at §§ 774.17(d) and (f). In order to continue operations, all of the requirements must be met.

Proposed paragraph (d)(2)(i) provides that the existing permittee must first obtain written approval of the transfer, assignment, or sale to allow for the successor to continue operations for the 30 days pending submittal of a new permit application. The transfer, assignment, or sale application from the permittee and the items required from the successor under (d)(2)(i) can be submitted at the same time and processed simultaneously by us. The application and information may have to be submitted and processed rapidly to allow for continued uninterrupted operations.

Proposed paragraph (d)(2)(i)(A) requires that the successor submit the legal, financial, compliance, and related information and violation information required under §§ 778.13 and 778.14.

Proposed paragraph (d)(2)(i)(B) requires that the successor submit a performance bond, or proof of other guarantee, or obtain the bond coverage of the original permittee, as required by Subchapter J.

Proposed paragraph (d)(2)(i)(C) requires the successor submit a signed and notarized written statement

assuming the liability and reclamation responsibilities of the existing permit.

Proposed paragraph (d)(2)(ii) provides that we will review the information submitted by the successor under paragraph (d)(2)(i)(A) of this section using the criteria in §§ 773.15(b)(2) and 773.16 of this Subchapter.

Paragraph (d)(2)(iii) provides the requirements that if the successor receives preliminary written approval, they may conduct mining operations for up to 30 days.

Proposed paragraph (d)(2)(iii)(A) requires that the successor must conduct the surface coal mining and reclamation operations in full compliance with the Act and the regulatory program.

Proposed paragraph (d)(2)(iii)(B) provides that the successor must conduct the surface coal mining and reclamation operations under the terms and conditions of the existing permit and any additional terms or conditions that may be imposed by us.

Proposed paragraphs (d)(2)(i)(C), (d)(2)(iii)(A), and (d)(2)(iii)(B) are based on the current provision at § 774.17(f). They have been separated here for clarity. The language in the proposed provisions is basically unchanged from the current regulation.

Proposed paragraph (d)(2)(iii)(C) provides that the successor must meet any other requirement specified by the regulatory authority.

Proposed paragraph (d)(2)(iii)(D) provides that the successor in interest must submit an application for a new permit within 30 days of succeeding to the interests of an existing permittee.

Proposed paragraph (d)(2)(iv) provides that if the successor submits a complete permit application within 30 days of succeeding to the existing permittee's interest and meets the other requirements under paragraph (d)(2)(iii), then the successor can continue operations until we make the decision to either approve or deny the application for a permit. If we deny the successor's permit application, then the successor must cease operations.

Proposed paragraph (d)(3) is amended from the current provision at § 774.17(b)(2). The change means that the advertisement requirements will only apply to a successor in interest. Persons subject to a transfer, assignment, or sale of rights granted under a permit will no longer be required to advertise such a change.

Proposed paragraph (d)(4) is based upon the current provision at § 774.17(c). The effect of incorporating this requirement into paragraph (d) is that public participation is limited to

situations involving a successor in interest.

Proposed paragraph (d)(5) provides that the previous permittee will not be released from responsibilities for any affected area or disturbed area of the permit unless the successor engages in surface coal mining operations which affect or disturb previously affected or disturbed areas and the regulatory authority approves the successor's application for a new permit. Paragraph (d)(5) further provides that, until the successor's application for a new permit is approved, both the previous permittee and its successor will be responsible for violations created after the successor begins surface coal mining operations, but prior to the approval of the new permit. We propose to add this provision to ensure that the permit is protected under the regulations until the successor is approved as the new permittee. We believe that it is extremely important that both the previous permittee and the successor understand their environmental obligations under these regulations.

Proposed paragraph (d)(6) provides that the successor in interest's replacement bond should not form the basis for the release of the previous permittee's bond. We propose to add this provision to be consistent with the requirements for the release of a performance bond under § 800.40. We believe that bond release is a separate consideration from the eligibility of a successor and the issuance of a new permit. Therefore, the previous permittee would remain under the Secretary's jurisdiction until the permitted operation has been substantially re-disturbed or affected by the successors' operations. The regulatory authorities will continue to pursue compliance from the correct party that it finds responsible for creating any violations on the permitted area.

Proposed paragraph (e) provides for the notification procedures that apply to § 774.17. Proposed paragraph (e)(1) provides that the regulatory authority must notify the permittee and the successor, the new operator, or other person gaining permit rights and commenters of its findings. This provision is based upon the current provision at § 774.17(e)(1) and is amended to be consistent with other proposed provisions in § 774.17.

Proposed paragraph (e)(2) provides that the person must immediately provide notice to the regulatory authority when the transfer, assignment, or sale of permit rights is complete. The proposed language is based upon the current provision at § 774.17(e)(2).

Proposed paragraph (e)(3) provides that the regulatory authority must update the relevant records in the AVS with the approved transfer, assignment, or sale or successor in interest information within 30 days of approval. We propose this mechanism to ensure that the information in AVS is current.

Q. Section 778.5—Applicability and Definitions

We propose to amend and reorganize the current definition of “owned or controlled” and “owns or controls.” We propose separate definitions for “ownership” and “control” and would move the definitions from § 773.5 to § 778.5. We believe that the proposed concepts of ownership or control are similar to the current definition, but that reorganizing “ownership” and “control” into separate definitions will improve clarity and provide a greater understanding of the various circumstances that meet the definitions.

We have concluded that we should clarify the definitions and better define who must be disclosed in an application. This change would more appropriately support the permit information requirements of our regulations in part 778, which in turn, support the requirements under section 507 of the Act.

This proposal will eliminate the use of the rebuttable presumption as it is applied to the current definition of “owned or controlled” and “owns or controls” and as it is used in various procedures that we propose to amend. A rebuttable presumption is where OSM’s current definition of “owns or controls” presumes that a type of relationship, an officer for example, is able to control the surface coal mining operation. In our example, an officer may challenge or rebut the presumption of control under existing procedures at §§ 773.24 and 773.25.

We believe that the emphasis on accurate and complete information and the mechanisms for investigation and alternative enforcement reflected in this proposal render the rebuttable presumption unnecessary under this proposal’s redesigned approach to permit information and permit eligibility. Those persons that certify in an application under proposed § 778.13(m) that they have the ability to control the operation and are under the Secretary’s jurisdiction for compliance have established the basis of their responsibility. In this proposal at § 773.15(b), we have given regulatory authorities the ability to identify persons who have the ability to control the surface coal mining operation that have not been identified in an

application. However, we have retained amended procedures for persons to challenge a finding on their ability to control a surface coal mining operation at § 773.24 in order to protect the due process rights of such persons. Taken together, we believe these amendments eliminate the need of the rebuttable presumption of ownership or control. Accordingly, we propose to create new § 778.5 and to provide for the separate definitions of “ownership” and “control” in this new section within part 778, which provides for the information required from applicants and permittees.

We propose “ownership” to mean holding an interest in a sole proprietorship, being a general partner in a partnership, owning 50 percent or more of the stock in a corporation, or having the right to use, enjoy, or transmit to others the rights granted under a permit.

We propose “control” to mean to own, manage, or supervise surface coal mining and reclamation operations, as either a principal or an agent, such that the person has the ability, alone or in concert with others, to influence or direct the manner in which surface coal mining and reclamation operations are conducted.

We do not propose to provide an exhaustive list of persons who would be covered under the proposed definition of “control.” However, we propose to include in the regulation at § 778.5, that persons who engage in or carry out surface coal mining and reclamation operations as an owner or controller, include, but are not limited to: (1) the president, other officers, directors, agent or person performing functions similar to a director; (2) those persons who have the ability to direct the day-to-day business of the surface coal mining operation; (3) the permittee or an operator, if different from the permittee; (4) partners in a partnership, the general partner in a limited partnership, or the participant(s), member(s), or manager(s) of a limited liability company; (5) persons owning the coal (through lease, assignment, or other agreement) and retaining the right to receive, or direct delivery of, the coal; (6) persons who make the mining operations possible by contribution (to the permittee or operator) of capital or other resources necessary for mining to commence or to continue operations at the site; (7) persons who control the cash flow or can cause the financial or real property assets of a corporate permittee or operator to be employed in the mining operation or distributed to creditors; and (8) persons who cause operations to be conducted in anticipation of their

desires or who are the animating force behind the conduct of operations.

At (6), examples of resources include a personal guarantee to obtain the reclamation bond, the assumption of responsibility for the liability insurance, a captive coal supply contract, and mining equipment.

At (8), “persons who cause operations to be conducted in anticipation of their desires” is consistent with the holding in *S & M Coal Co. and Jewell Smokeless Coal Co. v. OSMRE*, 79 IBLA 350 (1984). Also at (8), “persons who are the animating force behind the conduct of operations” is consistent with the holding in *Citronelle-Mobile Gathering, Inc. v. Herrington*, 826 F.2d 16 (Temp. Emer. Ct. App. 1987), *cert. denied sub nom Chamberlain v. United States*, 108 S.Ct. 327 (1987).

Those who engage in or carry out surface coal mining operations by owning or controlling the manner in which mining operations are conducted are clearly within the Secretary’s regulatory jurisdiction under sections 506(a) and 510(c) of SMCRA. However, not everyone who “engages in or carries out surface coal mining operations” under section 506(a) of the Act needs to be identified in an application. The proposed definitions of “ownership” and “control” create a clear distinction between employees of mining operations and those who “engage in or carry out mining operations” by owning, controlling, or influencing the manner in which mining operations are conducted. A broad class of persons, including employees, falls under the jurisdiction of the Secretary of the Interior. However, as proposed under this redesigned regulatory concept, we would only require a permit application to identify those who engage in or carry out mining operations as owners or controllers, and not employees per se. Requiring the disclosure in an application of all those who engage in or carry out surface coal mining operations as owners or controllers is critical under the redesigned approach.

There is a valid reason for making this regulatory distinction between the different types of persons and business entities who engage in or carry out mining operations. Employees, as opposed to the owners and controllers of mining operations, have few responsibilities under the Act other than to refrain from intentional violations. See section 518(e) of SMCRA. On the other hand, persons who can influence the manner in which mining operations are conducted have much broader duties and responsibilities under the Act. Therefore, it is more important that those who can directly control or

indirectly influence mining operations be identified in a permit application.

The failure of the current regulation to require the identification in an application of persons who own, control, or influence mining operations has resulted in regulatory authorities expending significant resources to investigate and identify those who have breached their responsibilities under the Act. Additionally, many persons who engage in or carry out mining operations by owning or controlling mining operations do so without a clear understanding of their personal responsibilities under SMCRA. All persons who engage in or carry out mining operations as owners or controllers should recognize that breaches of their personal duties and obligations place their personal assets at risk under SMCRA, its implementing regulations, and the case law interpreting those statutory and regulatory provisions. The proposed definitions of "ownership" and "control" will put those persons and entities who fall within the definitions on express notice that they have personal duties and obligations under SMCRA.

R. Section 778.10—Information Collection

We propose to amend the provisions for information collection in part 778, Permit Applications— Minimum Requirements for Legal, Financial, Compliance, and Related Information. Consistent with the Paperwork Reduction Act, in proposed paragraph (a) we note that OMB has approved the information collection requirements of part 778. Section 507(b) of SMCRA is the authority for regulatory authorities to require that persons applying for a permit to conduct surface coal mining and reclamation operations must submit certain information regarding the applicant and affiliated entities, their compliance status and history, property ownership and other property rights, right of entry, liability insurance, the status of unsuitability claims, and proof of publication of a newspaper notice. Paragraph (a) further provides that the regulatory authority uses this information to ensure that all legal, financial and compliance requirements are satisfied prior to issuance of a permit and the persons seeking to conduct surface coal mining operations must respond to obtain a benefit. Paragraph (a) finally provides that a Federal 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 and that the OMB

clearance number for this part is 1029–0034.

In proposed paragraph (b), we estimate that the public reporting and record keeping burden for this part averages 25 hours per response, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these information collection and record keeping requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, 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. Please refer to OMB Control Number 1029–0034 in any correspondence.

We propose to amend § 778.10 to indicate the authority under which we may require collection of information for part 778. This section conforms to OMB requirements to publish the estimated time needed to collect information under certain regulatory provisions. We invite comments on the estimated average number of hours required to fulfill the information collection requirements under part 778.

S. Section 778.13—Legal Identity and Identification of Interests

We propose to amend the provisions governing the required disclosure of information by applicants. We tried to provide for the complete range of information regulatory authorities may require from applicants. At § 778.13, we first propose to amend the title of the section to "legal identity and identification of interests." We propose this change to clarify that the information requirements of § 778.13 include both the information that identifies various interests of an applicant and the legal identity of the applicant. The change also emphasizes the importance of full disclosure of the applicant's identity and the identity of those who engage in or carry out surface coal mining operations as owners and controllers to the review of an application under the provisions of proposed §§ 773.15(b)(1) and (b)(3)(ii).

We also propose in § 778.13 to make the disclosure of the information required in § 778.13 easier for applicants that have existing or previous permits by using the technology afforded by AVS. Those applicants may

provide the information required under § 778.13 by certifying that the information contained in AVS at the time of application is accurate and complete. This provision substantially reduces the information collection burden for such applicants. Moreover, we expect regulatory authorities may also reduce their review of the certified information under § 778.13.

We also propose to amend the provisions at § 778.13 to require applicants to disclose the identity of any operator, known at the time of application, that is different from the applicant. We propose that the applicant provide not only the identity of the operator, but of those who engage in or carry out surface coal mining operations as the operator's owners and controllers. The entire § 778.13 is proposed here, including parts of the regulation that we are not proposing to change, so that the section may be viewed in its entirety. As discussed below, there are certain individual provisions for which no substantial changes is proposed, but that have been re-numbered to accommodate additional provisions.

We propose in the introductory paragraph of § 778.13 that an application must contain the information specified in proposed paragraphs (a) through (n), unless the applicant has existing permits, in which case certification under proposed paragraph (o) also applies.

Proposed paragraph (a) requires that an application contain a statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity. This provision is unchanged from the current regulation.

Proposed paragraph (b) requires that an application contain the name, address, telephone number, and taxpayer identification number of (1) the applicant, (2) the applicant's resident agent who will accept service of process, (3) the operator (if different from the applicant), (4) person(s) responsible for submitting the Coal Reclamation Fee Report (OSM–1) and for remitting the reclamation fee payment to OSM, and (5) the identity of all other persons who will engage in or carry out surface coal mining operations as an owner or controller on the permit.

We propose three amendments in paragraph (b). First, we would delete reference to the voluntary submission of social security numbers for individuals. Instead, we will require a taxpayer identification number for each person identified in the provision. We would amend this provision under the authority of the Debt Collection

Improvement Act of 1996. The effect of this statute is that if a person wishes to conduct business with the Federal Government, then the person must supply its taxpayer identification number. Taxpayer identification number means the social security number for individuals and the employer identification number for businesses.

Second, we propose to amend "resident agent" to "resident agent who will accept service of process." We propose this change because we believe the principal function of a resident agent is to receive communications for a company that is domiciled in a State apart from where it conducts business. We also believe that it is important not to confuse a company's resident agent with those individuals who both represent the interests of the company and have the ability to control the company, and who are therefore agents of the company.

Third, we would require the identity of all persons who will engage in or carry out surface coal mining operations as owners or controllers on the proposed permit. We believe that the applicant has the responsibility to provide this information.

As indicated by way of the provisions proposed below in paragraphs (c), (e), (f), (g), and (m), there are certain inescapable obligations on the part of the applicant and those persons who propose to engage in or carry out surface coal mining operations. One such obligation is the full disclosure of persons having the ability to control the surface coal mining and reclamation operation. Therefore, the regulatory authority should have the ability to take certain actions if persons having the ability to control the operation are not identified in an application or later by the applicant or permittee, but instead, are later discovered by OSM or the State regulatory authority.

We propose that OSM and the regulatory authority take such actions against the permittee, persons identified in the application, and persons not identified in the application, for failure to fully identify the applicant or permittee. They should be subject to a range of sanctions, including those provided for in section 521(c) of the Act and proposed at § 846.16.

Proposed paragraph (c) requires that the information required in paragraphs (c)(1), (c)(2), and (c)(3).

Proposed paragraph (c)(1)(i) requires each person's name, address, and taxpayer identification number. We propose to amend the current provision to delete the language for the voluntary submission of an individual's social

security number. As explained above "taxpayer identification number" would mean either an employer identification number or a social security number, whichever is applicable.

Proposed paragraph (c)(1)(ii) requires disclosure of the person's ownership or control relationship to the applicant, including percentage of ownership and location in the organizational structure.

Proposed paragraph (c)(1)(iii) requires that the application include the title of the person's position, the date that the person assumed the position, and, when submitted under existing § 773.17(h), the date of departure from the position. This provision is unchanged from the current regulations.

Proposed paragraph (c)(2) requires the name, address, and taxpayer identification number for publicly traded corporations.

Proposed paragraphs (c)(3)(i) through (iii) require you to provide the information required by paragraphs (c)(1) or (2) of the section for every officer, director, and person performing a function similar to a director.

Proposed paragraph (c)(3)(iv) requires this information for a person who owns or controls the applicant or the operator. Paragraph (c)(3)(v) requires this information for a person who owns 10 to 50 percent of the applicant or the operator.

Proposed paragraph (d) provides that the applicant need not report any owner that is a corporation not licensed to do business in any State or territory of the United States. This is a new provision that we propose as a mechanism to reduce the information collection burden of applicants. Based upon the experience of OSM and State regulatory authorities with the information collection provisions of § 778.13, we see no need to continue to require the identity of any owner of an applicant that is not licensed to do business in any State or territory of the United States. We believe that in any communication with an applicant, or the owners or controllers of an applicant, whether it routine correspondence or the notification of a violation, it is unlikely that a business entity so far removed from the surface coal mining operation could adequately respond. It has been our experience that shareholders of applicants and permittees that are "foreign" to the States and territories of the United States have little direct knowledge of the surface coal mining operation. We believe that it is unnecessary to continue to collect information that provides little benefit to the regulatory program.

Proposed paragraph (e) requires that for the applicant and each partner or principal shareholder of the applicant and operator, the application must include each name under which the person operates or previously operated a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application. Paragraph (e) is former paragraph (d) proposed in an amended form. We would revise the requirements to apply to the operation of a surface coal mining and reclamation operation instead of the ownership or control of a surface coal mining and reclamation operation, as provided in the current regulation. This amendment is internally consistent with the redesign of the regulatory program represented by this proposal.

Proposed paragraph (f) requires that the application contain the application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the applicant in any State in the United States. Paragraph (f) consists of the current regulation at § 778.13(e) and is re-numbered. The language of the provision is unchanged from the current regulation.

Proposed paragraph (g) requires that the application contain the operation's name, address, identifying numbers, including taxpayer identification number, Federal or State permit number and Mine Safety and Health Administration (MSHA) number, and the regulatory authority, for any surface coal mining operation permit held by the applicant or operator during the five years preceding the date of the application. Paragraph (g) is proposed as a revision of the current § 778.13(f) to change the focus from operations owned or controlled by the applicant to the permits held by the applicant or operator during the five years preceding the date of application. The information provided here in proposed § 778.13(g) forms the basis for a regulatory authority's review of an applicant's permit history at proposed § 773.15(b)(2). The current provision at § 778.13(f)(2) is deleted. The proposed provision requires permit information from the applicant and any operator different from the applicant. The current regulation at § 778.13(f)(2) provides for identifying ownership or control relationships to the applicant, including percentages of ownership. This information is unnecessary within this proposal's redesigned approach.

Proposed paragraph (h) requires that the application must contain the name and address of each legal or equitable

owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined. Paragraph (h) consists of the current regulation at § 778.13(g) and is proposed to be re-numbered. The language of the provision is unchanged from the current regulation.

Proposed paragraph (i) requires the name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area. Paragraph (i) consists of the current regulation at § 778.13(h) and is re-numbered. The language of the provision is unchanged from the current regulation.

Proposed paragraph (j) requires the MSHA numbers for all mine-associated structures that require MSHA approval. Paragraph (j) consists of the current regulation at § 778.13(i) and is re-numbered. The language of the provision is unchanged from the current regulation.

Proposed paragraph (k) requires that an application must contain a statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. Paragraph (k) further provides that, if requested by the applicant, any information required by this paragraph which is not on public file pursuant to State law must be held in confidence by the regulatory authority, as provided under § 773.13(d)(3)(ii). Paragraph (k) consists of the current regulation at § 778.13(j) and is re-numbered. The language of the provision is unchanged from the current regulation.

Proposed paragraph (l) requires that after an applicant is notified that its application is approved, but before the permit is issued, the applicant must, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under paragraphs (a) through (k). Paragraph (l) consists of the current regulation at § 778.13(k) and is re-numbered. The provision is proposed to be amended to change the reference, "(a) through (f)" to "(a) through (k)" to conform to the revisions proposed in § 778.13.

Proposed paragraph (m) requires that, prior to permit approval, all persons who will engage in or carry out surface coal mining operations as owners or controllers on the proposed operation must certify that they have the ability to control the proposed surface coal mining operation. This certification must also include a statement that these

persons are under the jurisdiction of the Secretary of the Interior for the purposes of compliance with the terms and conditions of the permit and the requirements of the regulatory program. We intend that all persons who will engage in or carry out surface coal mining operations as owners, controllers, or persons having the ability to control a proposed operation, should be fully aware of their statutory and regulatory obligations under the Act, the regulatory program, and the permit. It is important they understand that they will be held accountable for compliance with the Act and the regulatory program under the authority of the Secretary of the Interior. We propose to require that all such persons attest to their knowledge of these obligations in the application for a surface coal mining and reclamation permit. By acknowledging and attesting to their obligations under the Act, the regulatory program, and the permit prior to approval and issuance, such certification will establish the basis of their responsibility.

Proposed paragraph (n) provides that the applicant must submit the information required by this section and § 778.14 of this part in the format that OSM prescribes. Paragraph (n) consists of the current regulation at § 778.13(l) and is proposed to be re-numbered. The language of the provision is essentially unchanged from the current regulation.

Proposed paragraph (o) provides that applicants who have previously applied for permits and for whom relevant data resides in AVS may certify to the regulatory authority that the information in AVS is complete, accurate, and up-to-date. Paragraph (o) further provides that only information that has changed from a previous application or site-specific information needs to be provided in the current application. We propose to add this provision in response to comments received during the public outreach. We believe that the AVS computer system offers many as yet unused benefits. The most beneficial advantage to the regulated community is the use of the system's data to relieve certain information collection burdens, notably the information requirements in § 778.13.

Proposed paragraph (p) provides that the regulatory authority may establish a central file to house the legal identity information for each applicant, rather than placing duplicate information in each permit application file. This provision is proposed in response to comments received during the public outreach effort conducted before the development of this proposal. We believe that the provision could

effectively reduce the amount of duplicate information required from applicants by the regulatory authorities. It is important to note, however, that the establishment of such files by a regulatory authority is voluntary.

T. Section 778.14—Violation information

We propose to retain the current provisions in § 778.14, except to amend paragraph (c). However, the entire § 778.14 is proposed here, in order that the section may be viewed in its entirety. There are no substantive changes proposed in the provisions at paragraphs (a), (b), and (d). At paragraph (c), we propose to remove reference to § 773.5, reference to the definition of "owned or controlled" and "owns or controls," and to confine the information requirement, regarding violation notices and outstanding violation notices, to the applicant and to surface coal mining operations owned or controlled by the applicant. The reason for this change is sufficiently explained elsewhere in this preamble, notably at §§ 773.5 and 778.5. We also propose to eliminate the requirement that an applicant certify that violation notices are in the process of being corrected. Applicants who must prove that violation notices are in the process of being corrected would be identified in proposed § 773.18(b). We believe that experience with this regulation has raised the question as to the benefits of the certification requirement. By proposing to eliminate the certification requirement, we intend to reduce the information collection burden for applicants under § 778.14. In this proposal, the current provision at § 773.15(b)(2) containing the cross-reference to the certification requirement here in § 778.14 is removed and replaced with new provisions.

We propose that the introductory statement of § 778.14 provide that each application must contain the information required in the section. This statement is unchanged from the current regulation.

Proposed paragraph (a) requires that an application must state whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has either had a Federal or State coal mining permit suspended or revoked in the five years preceding the date of submission of the application or forfeited a performance bond or similar security deposited in lieu of bond. This provision is unchanged from the current regulation.

Proposed paragraph (b) requires the application contain a brief explanation

of the facts involved if any such suspension, revocation, or forfeiture referred to in paragraphs (a)(1) and (a)(2) of this section has occurred, including: (1) the identification number and date of issuance of the permit, and the date and amount of bond or similar security; (2) identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action; (3) the current status of the permit, bond, or similar security involved; (4) the date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and (5) the current status of the proceedings. The provisions of paragraph (b) and its five subparagraphs are unchanged from the current regulation.

Proposed paragraph (c) requires that an application contain a list of all violation notices received by the applicant during the three-year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation owned or controlled by the applicant. Proposed paragraph (c) further provides that for each violation notice reported, the list must include the information, as applicable, described in the five subparagraphs that follow. In addition to the proposed changes described above, we propose to amend paragraph (c) by deleting the phrase "that is deemed or presumed to be" from the provision. A significant effect of the changes to the definitions of "ownership" and "control" at § 778.5, as discussed above in that section, is that presumptions of ownership or control will no longer exist in these regulations. Therefore, we believe that any reference to a deemed or presumed relationship of the applicant to operations the applicant owns or controls here in § 778.14 is unnecessary.

Proposed paragraph (c)(1) provides that for each violation notice reported, the list must include any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the date of issuance of the violation notice, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency. We would amend the provision by deleting the requirement to provide the date of issuance of the MSHA number. We intend this change to mean that only the identifying numbers are required. OSM believes that the list need not include the date an MSHA number was issued, since the actual

MSHA number should provide sufficient identifying information.

Proposed paragraph (c)(2) provides that for each violation notice reported, the list must include a brief description of the violation alleged in the notice. This provision is unchanged from the current regulation.

Proposed paragraph (c)(3) provides that for each violation notice reported, the list must include the date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in paragraph (c) of this section to obtain administrative or judicial review of the violation. This provision is unchanged from the current regulation.

Proposed paragraph (c)(4) provides that for each violation notice reported, the list must include the current status of the proceedings and of the violation notice. This provision is unchanged from the current regulation.

Proposed paragraph (c)(5) provides that for each violation notice reported, the list must include the actions, if any, taken by any person identified in paragraph (c) of this section to abate the violation. This provision is unchanged from the current regulation.

Proposed paragraph (d) provides that after an applicant is notified that his or her application is approved, but before the permit is issued, the applicant must, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this section. This provision is unchanged from the current regulation.

U. Section 842.11—Federal inspections and monitoring

We propose to amend paragraph (e)(3)(i) at § 842.11. It provides that OSM will take action to ensure that the permittee and operator will be precluded from receiving future permits while violations continue at the site. This provision is a consequence of an OSM finding, in writing, that a surface coal mining operation has been abandoned and at least one notice of violation has been cited. Paragraph (e)(3)(i) is proposed to be amended to remove the phrase, "and owners and controllers of the permittee and operator" from the provision. This change is consistent with the redesigned approach represented by this proposal. The phrase proposed to be removed indicates that future applications by an applicant whose principals include the owners or controllers of a permittee or operator of a site having been abandoned with violations will not be found permit ineligible based solely

upon the violations at the abandoned site. We propose no changes for the remaining provisions in § 842.11.

V. Section 843.5—Definitions

We propose to delete the entire § 843.5 which contains two definitions. The definition for "unwarranted failure to comply" is proposed to be moved to § 846.5 under alternative enforcement. The definition for "willful violation" is proposed to be deleted as inconsistent with the proposed definition of "willful" or "willfully" under § 701.5.

W. Section 843.11—Cessation Orders

We propose to amend paragraph (g) at § 843.11. It provides that where OSM is the regulatory authority, OSM will provide written notice within 60 days after issuing a cessation order to any person who has been identified under proposed §§ 773.17(h) and 778.13(c) as a controller or who has the ability to control the operation against which the cessation order was issued. We propose this amendment to revise the cross-references to §§ 773.17 and 778.13 to be consistent with the amendments proposed in those sections. No other revisions to § 843.11 are proposed.

X. Section 843.13—Suspension or Revocation of Permits: Pattern of Violations

We propose to move § 843.13, the provisions for suspension or revocation of permits for a pattern of violations, from part 843 to § 846.14 of part 846, which is proposed to be devoted to alternative enforcement actions. We have consistently considered suspension or revocation for a pattern of violations to be one of the remedial measures that we call alternative enforcement actions. Accordingly, we propose to move the provisions governing suspension or revocation of permits for a pattern of violations to part 846. Proposed amendments to the provisions are discussed below, at part 846.

Y. Section 843.21—Procedures for Improvidently Issued State Permits

We propose to amend paragraphs (d) and (e) of the provisions at § 843.21, procedures for improvidently issued State permits. We propose no changes to the current regulations in paragraphs (a), (b), (c), and (f) at § 843.21, but have re-proposed these provisions to provide the opportunity for public review and comment. We propose to amend the Federal enforcement provision at paragraph (d) to add accurate and complete information to the reasons for not taking remedial action. We propose to amend the remedies to a notice of

violation at paragraph (e) to add accurate and complete information to the reasons a notice of violation might be terminated.

Proposed paragraph (a) of § 843.21 provides for the initial notice. It provides that, if OSM has reason to believe that a State surface coal mining and reclamation permit meets the criteria for an improvidently issued permit in § 773.20(b), or the State program equivalent, and the State has failed to take appropriate action on the permit under State program equivalents of §§ 773.20 and 773.21, OSM will issue to the State, and should provide to the permittee, an initial notice stating in writing the reasons for that belief. This provision is unchanged from the current regulation.

Proposed paragraph (b) provides for the State's response to the initial notice. It provides that within 30 days of the date on which an initial notice is issued under paragraph (a) of this section, the State must demonstrate to OSM in writing either: (1) the permit does not meet the criteria of § 773.20(b), or the State program equivalent; or (2) the State is in compliance with the State program equivalents of §§ 773.20 and 773.21. This provision is unchanged from the current regulation.

Proposed paragraph (c) provides for the issuance of a ten-day notice. It provides that if OSM finds that the State has failed to make the demonstration required by paragraph (b) of this section, OSM will issue to the State a ten-day notice stating in writing the reasons for that finding and requesting that within 10 days the State take appropriate action under the State program equivalents of §§ 773.20 and 773.21. This provision is unchanged from the current regulation.

Proposed paragraph (d) provides for Federal enforcement under these procedures. After 10 days from the date on which a ten-day notice is issued under paragraph (c) of § 843.21, if OSM finds that the State has failed to take appropriate action under the State program equivalents of §§ 773.20 and 773.21, or to show good cause for such failure, OSM will take appropriate remedial action. Paragraph (d) further provides that such remedial action may include the issuance of a notice of violation to the permittee or operator requiring that by a specified date all mining operations must cease and reclamation of all areas for which a reclamation obligation exists must commence or continue. This requirement would apply unless certain conditions were met to the satisfaction of the responsible agency. These conditions would include: (1) abatement of any violation, or the payment of any

penalty, or fee; (2) execution of a plan to abate the violation or a schedule to pay the penalty or fee; (3) the information questions have been resolved; or (4) the permittee, operator, and all operations owned or controlled by the permittee and operator are no longer responsible for the violation, penalty, fee, or information. Paragraph (d) further provides that, under this paragraph, good cause does not include the lack of State program equivalents of §§ 773.20 and 773.21. We propose to amend paragraph (d) to clarify that the regulatory authority will not take remedial action if the information questions are resolved to the satisfaction of the responsible agency.

Proposed paragraph (e) provides for the remedies to a notice of violation. Upon receipt from any person of information concerning the issuance of a notice of violation under paragraph (d) of this section, OSM will review the information and either vacate or terminate the notice as provided for in the subparagraphs that follow.

Proposed paragraph (e)(1) provides that OSM will vacate the notice of violation if it resulted from an erroneous conclusion under this section or if ownership or control has been refuted. We propose to amend this provision to add "or if ownership or control has been refuted" to allow for a successful challenge to the ability to control a surface coal mining operation under proposed § 773.24. A successful challenge under § 773.24 would also result in the vacation of the notice of violation.

Proposed paragraph (e)(2) provides that OSM will terminate the notice of violation if the three criteria discussed in the subparagraphs that follow are met.

Proposed paragraph (e)(2)(i) provides that the notice of violation will be terminated if all violations have been abated, all penalties or fees have been paid, and all information questions have been resolved. As with paragraph (d) above, we propose to add information to the issues covered by this provision. This change is consistent with the proposed changes at §§ 773.20 and 773.21.

Proposed paragraph (e)(2)(ii) provides that the notice of violation will be terminated if the permittee or any operation owned or controlled by the permittee has filed and is pursuing a good faith appeal of the violation, penalty, fee, or information request, or has entered into and is complying with an abatement plan or payment schedule to the satisfaction of the responsible agency. As with paragraphs (d) and (e)(2)(i) above, we propose to add

information to the issues covered by this provision.

Proposed paragraph (e)(2)(iii) provides that the notice of violation will be terminated if the permittee and all operations owned or controlled by the permittee are no longer responsible for the violation, penalty, fee, or information. As with paragraphs (d), (e)(2)(i), and (e)(2)(ii) above, we propose to add information to the issues covered by this provision.

Proposed paragraph (f) provides for no civil penalty under the provisions at § 843.21. OSM will not assess a civil penalty for a notice of violation issued under this section. This provision is unchanged from the current regulation.

Z. Section 843.24—Oversight of State Permitting Decisions With Respect to Ownership or Control or the Status of Violations

We would remove the provisions for the oversight of State permitting decisions with respect to ownership or control or the status of violations at § 843.24 from the regulations. Our approach to permit eligibility and permitting decisions would be redesigned by way of this proposal. Therefore, provisions for oversight of a State's permitting decisions in the context of presumptions of ownership or control or the status of a violation are no longer required. However, this change in no way alters our oversight obligations with respect to permit information, permitting decisions or the use of the AVS. Provisions for States to maintain data on State-issued violations in AVS is provided for in proposed § 773.22. Accordingly, § 843.24 is proposed to be removed from our rules.

AA. Part 846—Alternative Enforcement

We have devoted considerable time and effort to eliciting comments and suggestions from a broad range of interested parties prior to the development of a conceptual framework for this proposal. As the concepts for permit information, permit eligibility, and investigation evolved, it became apparent that another element was required to complete the conceptual framework of the redesigned approach. That key element is alternative enforcement.

In the current regulations, provisions exist for alternative enforcement at 30 CFR § 845.15(b)(2). Those provisions provide for appropriate action under sections 518(e), 518(f), 521(a)(4), and 521(c) of SMCRA whenever a violation has remained unabated for 30 days.

We propose to amend part 846 to provide further regulatory authority for the use of certain enforcement actions

that we collectively call "alternative enforcement." We view alternative enforcement actions as those enforcement measures provided for under sections 518 and 521 of SMCRA. These actions would be in addition to those provided for in § 845.15(b)(2), and would include provisions for individual civil penalties, currently the whole of part 846. Additionally the proposed regulations make it clear that we will pursue all appropriate remedies to correct SMCRA violations. Permittees have occasionally acted as if a regulatory authority may pursue only one of the alternative enforcement options set out in 30 CFR § 845.15(b)(2). This proposed rule makes it clear that we may pursue more than one option and are not limited to any single remedy to correct SMCRA violations.

We have concluded that under the January 31, 1997, Court of Appeals' ruling, an applicant's owners or controllers with violations might be able to continue unimpeded, in the surface coal mining business, although not as a permittee. Therefore, we have sought through alternative enforcement to compel compliance from those who would ignore, fail, or refuse to meet their affirmative duty to comply with the Act and regulatory program. We propose to rely upon the powerful statutory provisions in the Act which authorize alternative enforcement. The proposal provides the regulatory means whereby those statutory remedies are implemented to compel compliance under the regulatory program. State regulatory authorities have similar alternative enforcement remedies available under State-law counterparts to SMCRA. Under this proposal the regulatory authorities will more readily be able to invoke the remedies available to them.

AA.1. Section 846.1—Scope

We propose to amend § 846.1, the scope of part 846. It states that part 846 will govern the use of measures provided for in the Act at sections 201(c)(1), 510(c), 518(e), 518(f), 518(g), 521(a)(4), and 521(c), that we collectively call "alternative enforcement" measures or actions. OSM and State regulatory authorities will use these measures to compel compliance whenever any person engaging in or carrying out surface coal mining operations as an owner, controller, agent, permittee, or operator has failed in his or her duty to promptly correct violations. A determination, finding, or conviction made under these provisions must be so designated in the AVS by OSM or the State regulatory authority for the person for whom the

determination, finding, or conviction is made.

AA.2. Section 846.5—Definitions

We propose to amend § 846.5 by moving the definitions of "knowingly" and "willfully" to § 701.5 and amend them. The definition of "unwarranted failure to comply" is proposed to be moved from § 843.5 to § 846.5 to support the provisions for suspension or revocation of a permit for a pattern of violations.

"Unwarranted failure to comply" would mean the failure of a permittee, operator, agent, or owner or controller of a permittee or operator to prevent the occurrence of any violation of his or her permit or any requirement of the Act or regulations due to indifference, lack of diligence, or lack of reasonable care. It also would mean the failure to abate any violation of such permit or any requirement of the Act or regulations due to indifference, lack of diligence, or lack of reasonable care. This amended definition would pertain to an operator, owner, controller, or agent of a permittee or operator in addition to the permittee. We also propose to add "or any requirement" between "any violation of such permit" and "of the Act or regulations." This revision addresses an apparent typographical error in the current definition. We believe the definition of "unwarranted failure to comply" is more meaningful within the provisions for alternative enforcement.

The definition of "violation, failure, or refusal" in § 846.5 would mean: (1) A violation of a condition of a permit issued under a Federal program, a Federal lands program, Federal enforcement under section 502 of the Act, or Federal enforcement of a State program under section 521 of the Act; or (2) a failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under sections 518(b) or 703 of the Act. This language is unchanged from the current definition.

AA.3. Section 846.11—Criminal Penalties

We propose to create § 846.11 to contain the provisions for criminal penalties. It would provide OSM and State regulatory authorities with regulatory language to implement the statutory provisions of section 518(e) of the Act. The language in the proposed provisions is taken directly from the statutory provisions in section 518(e). Use of these provisions would entail a

finding by the regulatory authority for a person meeting the criteria for criminal prosecution and the referral of that finding to the Attorney General, as appropriate, to pursue prosecution under the provisions of the Act and these regulations.

Proposed paragraph (a) provides that the regulatory authority may pursue criminal sanctions against any person who willfully and knowingly (1) violates a condition of a permit; or (2) fails or refuses to comply with any order issued under section 521 or 526 of the Act or any order incorporated into a final decision issued by the Secretary; or (3) makes any false statement, representation, or certification, or fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to the regulatory program or any order or decision issued by the Secretary under the Act.

Proposed paragraph (b) provides that the regulatory authority may pursue criminal sanctions against a permittee, operator, or any owner, controller, principal or agent of the permittee or operator if the violation, failure or refusal under paragraph (a) of this section remains uncorrected for more than 30 days after (1) the suspension or revocation of a permit under § 846.14 of this part, or (2) the issuance of a violation notice to an unpermitted operation.

Proposed paragraph (c) provides that any person convicted under proposed § 846.11 may be subject to punishment by a fine of not more than \$10,000 or imprisonment of not more than one year, or both.

AA.4. Section 846.12—Individual Civil Penalties

We propose to replace current § 846.12 with the provisions for individual civil penalties. Proposed § 846.12 is based on the existing provisions for individual civil penalties which are currently the entire part 846 and which, in turn, are based upon the statutory requirements of section 518(f) of the Act. We propose to re-number the existing regulations governing individual civil penalties, with only minor edits to the language of the provisions. We propose these provisions to authorize the regulatory authority to make a determination for persons who meet the criteria for the assessment of an individual civil penalty.

Proposed paragraph (a) introduces the two criteria that must be met in order for an individual civil penalty to be assessed. The heading is provided for at current § 846.12.

Proposed paragraph (a)(1) provides that, except as provided in paragraph (a)(2) of this section, the regulatory authority may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee or operator who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal. This provision is currently at § 846.12(a). The cross-reference "paragraph (b)" is changed to "paragraph (a)(2)" in the proposed provisions. In addition, we propose to add "or operator" to paragraph (a)(1) to indicate that any corporate director, officer, or agent of an operator may also be assessed an individual civil penalty. This amendment is consistent with other revisions in this proposal, notably at §§ 773.15 and 778.13, where we propose to provide for the responsibilities and obligations of operators, different from the permittee, in the conduct of surface coal mining and reclamation operations.

Proposed paragraph (a)(2) provides that the agency will not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until the agency issues a cessation order to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days. The proposed language is unchanged from the current regulation at § 846.12(b).

Proposed paragraph (b) provides for the amount of individual civil penalty. The proposed heading is unchanged from the current heading at § 846.14.

Proposed paragraph (b)(1) provides that in determining the amount of an individual civil penalty assessed under paragraph (a) of this section, the regulatory authority will consider the criteria specified in section 518(a) of the Act, including (i) the individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation; (ii) the seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health and safety of the public; and (iii) the demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notification of the violation, failure or refusal. The current provision is at §§ 846.14(a)(i) through (a)(iii). Except for the amended cross-reference in paragraph (b)(1), the proposed language is unchanged from the current regulation.

Proposed paragraph (b)(2) provides that the penalty will not exceed \$5,000 for each violation. Paragraph (b)(2)

further provides that each day of a continuing violation may be deemed a separate violation and the regulatory authority may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Secretary, until abatement or compliance is achieved. The proposed language is unchanged from the current regulation at § 846.14(b).

Proposed paragraph (c) provides for the procedure for the assessment of an individual civil penalty. The heading is unchanged from the current regulation at § 846.17.

Proposed paragraph (c)(1) provides for the notice of an individual civil penalty. It states that the regulatory authority will serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order. The proposed language is unchanged from the current regulation at § 846.17(a).

Proposed paragraph (c)(2) provides for the final order and the opportunity for review. It provides that the notice of proposed individual civil penalty assessment will become a final order of the Secretary, 30 days after service upon the individual, unless the individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Phone: 703-235-3800), in accordance with 43 CFR 4.1300 *et seq.*; or the OSM and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal. The proposed language is based on the current regulations at §§ 846.17(b)(i) and (b)(ii).

Proposed paragraph (c)(3) provides for the service of an individual civil penalty. Paragraph (c)(3) provides that for purposes of this section, OSM will perform service on the individual to be assessed an individual civil penalty by certified mail or by any alternative means consistent with the rules governing service of a summons or complaint under Rule 4 of the Federal Rules of Civil Procedure. Service is complete upon tender of the notice of

proposed assessment and included information or of the certified mail and is not deemed incomplete because of refusal to accept. The proposed language is based on the current regulation at § 846.17(c).

Proposed paragraph (d) provides for the conditions under which an individual civil penalty is paid. The proposed heading is unchanged from the current heading § 846.18.

Paragraph (d)(1) provides for the payment of an individual civil penalty when there has been no abatement or appeal of the penalty. It provides that if a notice of proposed individual civil penalty becomes a final order in the absence of a petition for review or abatement agreement, the penalty will be due upon the issuance of the final order. The proposed language is unchanged from the current regulation at § 846.18(a).

Proposed paragraph (d)(2) provides for the payment of an individual civil penalty when the individual subject to the penalty appeals the penalty. It provides that if an individual named in the notice of proposed individual civil penalty assessment files a petition for review in accordance with 43 CFR 4.1300 *et seq.*, the penalty becomes due upon issuance of a final administrative order affirming, increasing, or decreasing the proposed penalty. The proposed language is unchanged from the current regulation at § 846.18(b).

Proposed paragraph (d)(3) provides for the payment of an individual civil penalty when an abatement agreement has been executed. It provides that where the regulatory authority and the corporate permittee or individual have agreed in writing on a plan for the abatement of, or compliance with, the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the regulatory authority stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn. This provision is currently at § 846.18(c). Except for punctuation, the proposed provision is unchanged from the current regulation.

Proposed paragraph (d)(4) provides for instances of delinquent payment. It provides that following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty is subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal government, under Treasury Financial

Manual 6-8020.20. Paragraph (d)(4) further provides that the Treasury current value of funds rate is published by the Fiscal Service in the notices section of the **Federal Register** and that interest on unpaid penalties will run from the date payment first was due until the date of payment. Paragraph (d)(4) further provides that failure to pay overdue penalties may result in one or more of the actions specified in §§ 870.15(e)(1) through (e)(5) and that delinquent penalties are subject to late payment penalties specified in § 870.15(f) and processing and handling charges in § 870.15(g). The proposed language is unchanged from the current regulation at § 846.18(d).

AA.5. Section 846.14—Suspension or Revocation of Permits: Pattern of Violations

We propose to replace current § 846.14 with provisions to allow the regulatory authority to suspend or revoke permits for a pattern of violations. The provisions proposed in § 846.14 are based upon the current provisions at § 843.13 which, in turn, are based upon the statutory requirements of section 521(a)(4) of the Act.

Proposed paragraph (a)(1) provides that the Director will issue an order to a permittee, requiring them to show cause why the permit and their right to mine under the Act should not be suspended or revoked, if the regulatory authority determines that a pattern of violations of any requirements of the Act, this Chapter, the applicable program, or any permit condition required by the Act exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions.

Paragraph (a)(2) further provides that violations committed by any person conducting surface coal mining operations on behalf of the permittee would be attributed to the permittee, unless the permittee establishes that the violations were: (1) acts of deliberate sabotage or in direct contravention of the expressed orders of the permittee; or (2) willful and knowing violations of a contract provision which the permittee actively tried to prevent.

Paragraph (a)(3) provides that if OSM determines that a pattern of violations exists, it will promptly file a copy of any order to show cause with the Office of Hearings and Appeals. We believe that the permittee should be protected from a determination under the provisions of proposed § 846.14 in instances where a violation resulted from activities that occur in direct opposition to orders or

direction given by the permittee and where the permittee actively tried to prevent a violation that results from the willful and knowing disregard of a provision in a contract between the permittee and its operator.

Proposed paragraph (a)(4) provides that the regulatory authority may determine that a pattern of violations exists or has existed after considering the circumstances, including: (1) the number of violations, cited on more than one occasion, of the same or related requirements of the Act, the regulations, the applicable program, or the permit; (2) the number of violations, cited on more than one occasion, of different requirements of the Act, the regulations, the applicable program, or the permit; and (3) the extent to which the violations were isolated departures from lawful conduct. We would remove the language in the current provision whereby a determination of a pattern of violations is based upon two or more Federal inspections within any 12-month period. We have concluded that the Act at section 521(a)(4) does not contain specific criteria as set out in the current regulation. However, we invite comments on this proposed change.

Proposed paragraph (a)(5) provides that the regulatory authority will promptly review the history of violations of any permittee or operator who has been cited for violations of the same or related requirements of the Act, this Chapter, the applicable program, or the permit. Paragraph (a)(5) further provides that if, after such review, the regulatory authority determines that a pattern of violations exists or has existed, the regulatory authority will issue an order to show cause as provided in paragraph (a)(1) of this section. This provision is currently at § 843.13(a)(3). We would amend the provision to add that we will review a history of violations for the operator in addition to the permittee. We propose this change to provide for the responsibilities and obligations of operators, different from the permittee, in the conduct of surface coal mining and reclamation operations. We would further amend the provision to remove the language whereby the review of violations is based upon three or more Federal inspections within any 12-month period. As discussed above in proposed paragraph (a)(4), we have concluded that the Act at section 521(a)(4) does not contain specific criteria as set out in the current regulation. Therefore, we propose to remove the criteria in the proposed rule. We also invite comments on this proposed change.

Proposed paragraph (a)(6) provides that, in determining whether a pattern exists or has existed, OSM will consider only violations issued as a result of: (1) the enforcement of the provisions of Title IV of the Act, or a Federal program or a Federal lands program under Title V; (2) a Federal inspection during the interim program and before the applicable State program was approved under sections 502 or 504 of the Act; or (3) Federal enforcement of a State program in accordance with sections 504(b) or 521(b) of the Act. This provision is currently at § 843.13(a)(4)(i) and includes paragraphs (A), (B), and (C). We would amend the current regulation at § 843.13(a)(4) by revising the language and reorganizing the provisions. In proposed paragraph (a)(6), the phrase, "the number of violations within any 12-month period" is replaced with "whether a pattern exists or has existed." This revision is consistent with the amendments to provisions here in proposed § 846.14 in paragraphs (a)(1) and (a)(3). We would delete the last clause in paragraph (a)(4) to make the language in paragraph (a)(6) more concise. In addition, we are re-proposing current subparagraph (a)(4)(i)(A) as subparagraph (a)(6)(i) to require that the provision applies not only to Title V, but also to Title IV of the Act.

As indicated above in proposed paragraphs (a)(5) and (a)(6), we invite comments on what constitutes a pattern of violations. Specifically, we ask whether the review of the history of violations and a determination of whether a pattern exists is permit-specific. Alternatively, should it include a controller's compliance history at prior operations. For example, if a controller has been associated with two previous mining operations that have failed to pay reclamation fees and the current operation is delinquent in paying reclamation fees, would this constitute a pattern of violations?

We have not re-proposed the current provision at § 843.13(a)(4)(ii) in § 846.14. We believe that this provision is inconsistent with our proposal to eliminate the pre-determined number of inspections and the defined time frame for the occurrence of the violations in order to establish a pattern of violations.

Proposed paragraph (b) provides for the hearing and order in the procedures for suspension or revocation of a permit for a pattern of violations. A heading would be inserted at paragraph (b) identifying that the provisions that follow pertain to the hearing and order under these regulations.

Proposed paragraph (b)(1) provides that if the permittee files an answer to

the show cause order and requests a hearing under 43 CFR Part 4.1190 *et seq.*, a public hearing will be provided as set forth in that part. Paragraph (b)(1) corresponds to the current regulation at § 843.13(b). Paragraph (b)(1) would be amended to provide for the specific regulatory citation in 43 CFR Part 4.

Proposed paragraph (b)(2) provides that within the time limits set forth in 43 CFR Part 4.1190 *et seq.*, the Office of Hearings and Appeals will issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. Paragraph (b)(2) further provides that if the Office of Hearings and Appeals revokes or suspends the permit and the permittee's right to mine under the Act, the permittee must immediately cease surface coal mining operations on the permit and must comply with whichever of the two following paragraphs is applicable. This provision is revised from the current regulation at § 843.13(c). We would amend the provision by deleting "sixty days" and thereby deferring to 43 CFR Part 4.1190 *et seq.* for the time period within which the Office of Hearings and Appeals will issue a written determination and order.

Proposed paragraph (b)(2)(i) provides that if the permit and the right to mine under the Act are revoked, the permittee must complete reclamation within the time specified in the order. The proposed language is unchanged from the current regulation at § 843.13(c)(1).

Proposed paragraph (b)(2)(ii) provides that if the permit and the right to mine under the Act are suspended, the permittee must complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order. The proposed language is unchanged from the current regulation at § 843.13(c)(2).

Proposed paragraph (c) provides for the review of violations under the procedures for suspension or revocation of a permit for a pattern of violations. It provides that whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the regulatory authority will review the permittee's history of violations to determine whether a pattern of violations exists and will issue an order to show cause as appropriate. This provision is currently at § 843.13(d). We propose to add a heading to identify the content of the provision and to delete the cross-reference to § 845.15(b)(2) from the current regulation. Insofar as we are proposing fully-developed regulatory provisions for alternative enforcement

actions here in part 846, we believe the cross-reference to § 845.15(b)(2) in the regulations for suspension or revocation of a permit for a pattern of violations is no longer required.

Proposed paragraph (d) provides for the service of the show cause order under the procedures for suspension or revocation of a permit for a pattern of violations. Paragraph (d) provides that for purposes of this section and § 846.15 of this part, the permittee and/or operator, or owner, controller, principal, or agent of the permittee or operator must be served by certified mail, or by any alternative means consistent with the rules governing service of a summons or complaint under Rule 4 of the Federal Rules of Civil Procedure. Paragraph (d) further provides that service is complete upon delivery of the order or of the certified mail and is not considered incomplete because of a person's refusal to accept.

AA.6. Section 846.15—Suspension or Revocation of Permits: Failure to Comply With a Permit Condition

We propose to create § 846.15 to provide procedures for the suspension or revocation of a permit for failure to comply with a permit condition. We believe these provisions are required under the redesigned approach and are included under alternative enforcement actions. One of the aspects of the redesign proposed today is an increased emphasis on the obligations and responsibilities of persons after a permit is approved and issued. We believe that all persons who engage in or carry out surface coal mining operations, including permittees and operators, have an affirmative duty to comply with every condition under which a permit is issued in order to continue to have the benefit of an approved permit. We also believe that regulatory authorities must have the ability to compel compliance of persons who fail to comply with permit conditions. Moreover, we have concluded that the statutory provisions in section 201(c) of the Act provide the authority for proposed § 846.15.

Paragraph (a) of proposed § 846.15 provides the general provision for suspension or revocation for failure to comply with a permit condition. It states that if the regulatory authority finds that a permittee or operator, or any owner, controller, principal, or agent of a permittee or operator, has failed to comply with any condition imposed on an approved permit, the agency will order the permittee or operator, or any owner, controller, principal, or agent of the permittee or operator, to show cause why the permit should not be suspended or revoked.

Proposed paragraph (b) provides procedures for suspension or revocation for failure to comply with additional permit conditions provided for in proposed § 773.18. Paragraph (b) provides that if the regulatory authority finds: (1) a permittee has less than five years experience or controllers without demonstrated successful environmental compliance; and (2) the permittee or operator, or any owner, controller, principal, or agent of the permittee or operator has failed to comply with the additional permit conditions imposed under § 773.18 and the permittee is unable or unwilling to comply with the mining and reclamation plans. We have proposed this provision to provide regulatory authorities with an administrative remedy to use when a permittee or operator or other person subject to the additional permit conditions under § 773.18 fails to comply with the additional conditions. We also invite comments on the proposal in § 846.15, especially the criteria the regulatory authority would use to find a permittee unable or unwilling to comply with the mining and reclamation plan.

Proposed paragraph (c) provides for the hearing and order under the procedures for suspension or revocation of a permit for failure to comply with a permit condition.

Proposed paragraph (c)(1) provides that if the permittee files an answer to the show cause order and requests a hearing under 43 CFR part 4 Subpart L, a public hearing may be provided as set forth in that part.

Proposed paragraph (c)(2) provides that if the Office of Hearings and Appeals revokes the permit, the permittee and the operator, if any, must immediately cease surface coal mining operations on the permit and must complete reclamation within the time specified in the order.

Proposed paragraph (c)(3) provides that if the permit is suspended, the permittee and operator must complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

Proposed paragraph (c)(4) provides that if the right of an owner, controller, principal or agent of the permittee or operator to engage in or carry out surface coal mining operations is suspended or revoked, such person is prohibited from owning, controlling, or serving as a principal or agent for any surface coal mining operation as specified in the order.

Proposed paragraph (d) provides for the service of the show cause order under the procedures for suspension or revocation of a permit for failure to

comply with a permit condition. Paragraph (d) provides that the provisions for service in § 846.14 also govern service under § 846.15.

AA.7. Section 846.16—Civil Actions for Relief

We propose to create § 846.16 to provide procedures whereby OSM and State regulatory authorities may pursue civil actions for relief under the authority of section 521(c) of the Act. We propose to add these provisions to part 846 to complement administrative determinations and referrals for prosecution. Under each remedial action, whether administrative, civil, or criminal, we would seek compliance from those who would ignore, fail, or refuse to meet their affirmative duty to comply with the Act and the regulatory program. The use of the regulations in § 846.16 entails a finding by the regulatory authority that a person meets the proposed criteria and referral to the Attorney General, as appropriate, to pursue one or more appropriate civil actions under the Act and these regulations.

Proposed paragraph (a) provides that under section 521(c) of the Act, OSM will request the Attorney General to institute civil action for relief according to these procedures. Civil actions for relief include a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the surface coal mining operation is located or in which the permittee or operator has its principal office. OSM or the State regulatory authority will seek such civil action whenever a permittee or operator, or owner, controller, principal, or agent of the permittee or operator is found to have committed any one of six actions described in the paragraphs that follow.

Proposed paragraph (a)(1) provides that OSM or a State regulatory authority may pursue a civil action for relief if the permittee or operator, or owner, controller, principal, or agent of the permittee or operator has: (i) violated or failed or refused to comply with any order or decision issued by OSM or the State regulatory authority with jurisdiction under the Act; or (ii) interfered with, hindered, or delayed the agency with jurisdiction in carrying out the provisions of the Act or its implementing regulations.

Proposed paragraph (a)(1)(iii) provides that OSM or a State regulatory authority may pursue a civil action for relief if the permittee or operator, or owner, controller, principal, or agent of the permittee or operator has refused to

admit the agency's authorized representative onto the mine site.

Proposed paragraph (a)(1)(iv) provides that OSM or a State regulatory authority may pursue a civil action for relief if the permittee or operator, or owner, controller, principal, or agent of the permittee or operator has refused to allow inspection of the mine by the agency's authorized representative.

Proposed paragraph (a)(1)(v) provides that OSM or a State regulatory authority may pursue a civil action for relief if the permittee or operator, or owner, controller, principal, or agent of the permittee or operator has refused to furnish any information or report requested by the agency under the provisions of the Act or its implementing regulations.

Proposed paragraph (a)(1)(vi) provides that OSM or a State regulatory authority may pursue a civil action for relief if the permittee or operator, or owner, controller, principal, or agent of the permittee or operator has refused to allow access to, and copying of, such records as the agency determines necessary to carry out the provisions of the Act and its implementing regulations.

Proposed paragraph (b) provides that temporary restraining orders will be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure, as amended.

Proposed paragraph (c) provides that any relief granted by the court to enforce an order under paragraph (a)(1)(i) of this section will continue in effect until completion of all proceedings for review of such order under the Act or its implementing regulations unless, beforehand, the district court granting such relief sets aside or modifies the order.

We also propose to incorporate the current provisions at §§ 846.17 and 846.18 into the provisions proposed at § 846.12, as noted in that section.

IV. Procedural Determinations

1. Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule does not raise novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the findings that the regulatory additions in the rule will not significantly change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because the rule does not impose major new requirements on the coal mining industry or consumers.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

4. Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) is not required.

5. Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. This determination is based on the fact that the rule will not have an impact on the use or value of private property and so,

does not result in significant costs to the government.

6. Executive Order 12612—Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed in the Record of Compliance on file in OSM's Administrative Record. The proposed rule does not meet the threshold criteria for requiring a Federalism Assessment because it 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 various levels of government."

7. Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and

meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Paperwork Reduction Act

In accordance with 44 U.S.C. 3507, OSM has submitted the information collection and record keeping requirements of 30 CFR Parts 773, 774, and 778 to the Office of Management and Budget (OMB) for review and approval.

30 CFR Part 773

Title: Requirements for Permits and Permit Processing.

OMB Control Number: 1029-NEW.

Abstract: The regulations at 30 CFR 773 implement section 510 (c) of the Act by requiring information from permit applicants, the coordination and regulatory review of information regarding ownership and control of the applicant and violation history, and the public participation in the approval process for a surface coal mining permit. It also establishes notification requirements and decision criteria for

the agency responsible for making decisions on applications.

Need for and Use: OSM and State regulatory authorities use the information collected under 30 CFR Part 773 to ensure that persons planning to conduct surface coal mining operations meet the criteria for permit approval under section 510(b) of the Act, and is eligible to receive a permit under section 510(c).

Respondents: Persons who prepare the approximately 300 applications for permits for surface coal mining operations that OSM and State regulatory authorities receive each year, and the 24 State regulatory authorities who must evaluate the permit applications.

Total Annual Burden: OSM estimates that a person will need an average of 34 hours to prepare the portion of the permit application required under part 773, including the regulatory review time. The burden placed on respondents by section is as follows:

BILLING CODE 4310-05-P

SECTION	RESPONSES	HOURS PER RESPONSE	TOTAL HOURS
773			
13	324	2.5	825
15(b)(1)	295	31	9,145
19(b)(1)	295	.5	148
19(e)(2)	124	10	1,000
22(b-c)	0	0	0
TOTALS	324	34	11,118

30 CFR Part 774

Title: Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights.

OMB Control Number: 1029-NEW.

Abstract: Sections 506 and 511 of the Act provide that persons seeking permit revisions, renewals, transfer, assignment, or sale of permit rights for surface coal mining activities submit relevant information to the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.

Need For and Use: OSM and State regulatory authorities use the information collected to determine whether the application meets the statutory and regulatory standards for approval of a permit revision, renewal,

or transfer, assignment or sale of permit rights.

Respondents: Persons who prepare the approximately 5,370 annual permit revisions, renewals, and requests for approval of permit transfers, sales or assignments and the 24 State regulatory authorities that process these permit changes.

Total Annual Burden: The estimated annual burden for this part totals 97,214 hours. Specifically, OSM estimates that 4,000 permit revisions will be received annually, requiring 8 hours for each respondent to prepare, and an additional 8 hours for each State regulatory authority to review and approve or deny. OSM anticipates receiving 725 permit renewals annually requiring 16 hours for operators to prepare, and an additional 16 hours for

each State regulatory authority to review and approve or deny. Finally, OSM estimates that 645 applications for transfer, assignment, or sale of permit rights will be received annually requiring 8 hours to prepare and 8 hours to review by the appropriate regulatory authority. Therefore, OSM estimates that respondent burden will be 32 hours for the average request for permit renewals, revisions, or transfers, assignments or sales, in addition to the time required for regulatory review.

30 CFR Part 778

Title: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.

OMB Control Number: 1029-NEW.

Abstract: Part 778 implements section 507(b) of the Act which provides that

persons applying for a permit to conduct surface coal mining operations must submit to the regulatory authority certain information regarding the applicant and affiliated entities, their compliance history, property ownership and other property rights, right of entry, liability insurance, the status of unsuitability claims, and proof of publication of a newspaper notice to promote public participation.

Need For and Use: OSM and State regulatory authorities use the information collected to insure that all legal, financial and compliance requirements are satisfied prior to issuance of a permit.

Respondents: Persons who prepare the approximately 300 annual permit applications to conduct surface coal mining and reclamation operations, and the 24 State regulatory authorities who

process the information prior to approval or denial of the application.

Total Annual Burden: The estimated annual burden for this part totals 8,223 hours, which translates to an approximate burden of 25 hours for respondents to complete this portion of the permit application, in addition to the time required for regulatory review. The burden placed on respondents by section is as follows:

BILLING CODE 4310-05-P

INFORMATION COLLECTION SUMMARY FOR 30 CFR PART 778			
SECTION	RESPONDENTS	HOURS PER RESPONDENT	TOTAL HOURS
778.13	324	6	1,800
778.14	324	6	1,800
778.15	324	6	1,795
778.16	224	9	1,798
778.17	324	3	895
778.22	69	3	135
TOTALS	324	25	8,223

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of OSM and State regulatory authorities, including whether the information will have practical utility;

(b) The accuracy of OSM'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, OSM must obtain OMB approval of all information and record keeping 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. These numbers appear in section xxx.10 of 30 CFR Parts 700 through 955. To obtain a copy of OSM's information collection clearance requests, explanatory information, and related forms, contact John A. Trelease at (202) 208-2783 or by e-mail at jtrelas@osmre.gov.

By law, OMB must submit comments to OSM within 60 days of publication of this proposed rule, but may respond as soon as 30 days after publication. Therefore, to ensure consideration by OMB, you must send comments regarding these burden estimates or any other aspect of these information collection and record keeping requirements by January 20, 1999, to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Please refer to the appropriate OMB Control Numbers in any correspondence.

9. National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) of this proposed rule and has made a tentative finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C). It is anticipated that a finding of no significant impact (FONSI) will be made for the final rule in accordance with OSM procedures under NEPA. The draft

EA is on file in the OSM Administrative Record at the address specified previously (see ADDRESSES). The EA will be completed and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

10. Clarity of this regulation.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "S" and a numbered heading; for example, § 773.15). (5) Is the description of the proposed rule in the SUPPLEMENTARY INFORMATION section of this preamble helpful in

understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Execsec@ios.doi.gov

11. Authors

The proposed rule has been developed by the Ownership and Control Redesign Team. Earl Bandy is the Team Leader. The principal authors from the Team were Ann Singleton, Gary Kitzmiller, Sherry Wilson, and Steve McEntegart. Editing the proposed rule was coordinated by Steve McEntegart, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 773

Administrative practice and procedure, Reporting and record keeping requirements, Surface mining, Underground mining.

30 CFR Part 774

Reporting and record keeping requirements, Surface mining, Underground mining.

30 CFR Part 778

Reporting and record keeping requirements, Surface mining, Underground mining.

30 CFR Part 842

Law enforcement, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and record keeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Dated: December 4, 1998.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, OSM proposes to amend 30 CFR Parts 701, 724, 773, 774, 778, 842, 843, and 846 as set forth below:

PART 701—PERMANENT REGULATORY PROGRAM

1. Revise the authority citation for part 701 to read as follows:

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

2. Amend § 701.5 as follows:

a. Remove the definition of *Willful violation*.

b. Revise the definition of *Successor in interest* to read as set forth below:

c. Add the following definitions in alphabetical order to read as set forth below:

§ 701.5 Definitions.

Applicant/Violator System or *AVS* means the automated information system of applicant, permittee, operator, violation, and related data OSM maintains to achieve compliance with SMCRA.

* * * * *

Federal violation notice means a violation notice issued by OSM or by another agency or instrumentality of the United States.

* * * * *

Knowing or *knowingly* means that an individual knew or had reason to know in authorizing, ordering, or carrying out an act or omission that such an act or omission constituted a violation of the Act, or a failure or refusal to comply with the Act.

* * * * *

Link to a violation means that a person owning or having the ability to control the proposed surface coal mining operation has owned or had the ability to control surface coal mining operations at another site at the time a violation existed at that other operation.

* * * * *

Outstanding violation means a violation notice that remains unabated or uncorrected beyond the abatement or correction period.

* * * * *

State violation notice means a violation notice issued by a State regulatory authority or by another agency or instrumentality of State government.

* * * * *

Successful environmental compliance means having no outstanding violations and demonstrating consistent abatement

and other correction of violations, payment of civil penalties, and payment of reclamation fees within the time frames established for abatement and payment, allowing for administrative due process.

Successor in interest means a person who the regulatory authority approves as the new permittee when there is a permittee change.

* * * * *

Violation notice means any written notification from a governmental entity of a violation of the Act or any Federal regulation issued under the Act, a State program, or any Federal or State law or regulation pertaining to air or water environmental protection, in connection with a surface coal mining operation. It includes, but is not limited to, a notice of violation; an imminent harm cessation order; a failure-to-abate cessation order; a final order, bill, or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent reclamation fees; a notice of bond forfeiture, where one or more violations upon which the forfeiture was based have not been corrected; a notice of bond forfeiture where the cost of reclamation has exceeded the amount forfeited, or in States with bond pools, a determination that additional reclamation or reimbursement is required.

* * * * *

Willful or *willfully* means that an individual acted either intentionally, voluntarily or consciously, and with intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out an action or omission that constituted a violation of the Act, or a failure or refusal to comply with the Act or any Federal or State law or regulation applicable to surface coal mining operations.

Part 724—INDIVIDUAL CIVIL PENALTIES

3. Revise the authority citation for part 724 to read as follows:

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

§ 724.5 [Amended]

4. In § 724.5 remove the definitions of *Knowingly* and *Willfully*.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

5. Revise the authority citation for part 773 to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a *et seq.*, 16 U.S.C. 469 *et seq.*, and 16 U.S.C. 1531 *et seq.*

§ 773.5 [Removed]

6. Remove § 773.5.

7. Revise § 773.10 to read as follows:

§ 773.10 Information Collection.

(a) Under the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements of this part. Regulatory authorities will use this information in processing surface coal mining permit applications. Persons intending to conduct such operations must respond to obtain a benefit. A Federal 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 clearance number for this part is 1029-NEW.

(b) We estimate that the public reporting burden for this part will average 34 hours per response, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 210, 1951 Constitution Avenue, 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. Please refer to OMB Control Number 1029-NEW in any correspondence.

8. Amend § 773.15 as follows:

a. In the last sentence of paragraph (a)(1) remove the reference to "paragraph (b)(2) of this section" and add "part 775 of this chapter" in its place.

b. Add paragraph (a)(3) to read as set forth below.

c. Revise paragraphs (b)(1), (b)(2), and (b)(3) to read as set forth below.

d. In paragraph (b)(4)(i)(C)(I) remove the date "September 30, 1994" and add "September 30, 2004" in its place.

e. Revise paragraph (e) to read as set forth below.

§ 773.15 Review of permit applications.

(a) * * *

(3) We, the regulatory authority, will determine whether you, the applicant, are eligible under § 773.16 to receive a permit.

(i) We will evaluate whether your application contains accurate and

complete information, to make the finding required under paragraph (c)(1) of this section.

(ii) If we find that you have submitted inaccurate, incomplete, or inconsistent legal identity, compliance, or technical information, you must correct the omission, inaccuracy, or inconsistency. We may stop review of the application until the issue is resolved.

(b) *Review of the applicant's legal identity information.* (1) We will make an initial determination whether your legal identity information submitted under § 778.13 of this chapter is accurate and complete, based upon information provided in the permit application, an AVS check, and all other reasonably available information. Once we make a preliminary determination that the information is accurate and complete, we will update the relevant records in the AVS with any previously unreported legal identity information within 30 days. This update must occur before requesting a report from the AVS on the applicant's compliance history under paragraph (b)(3)(i) of this section.

(i) If we find that you, the operator, or any owner, controller, principal, or agent of you or your operator has knowingly or willfully concealed information about any person owning or having the ability to control you or your operator we will—

(A) Inform you in writing of our finding and ask you or the operator to disclose all persons having such a relationship to you or the operator before making a decision on a permit application; and

(B) Investigate to determine if your response under paragraph (b)(1)(i)(A) of this section is a full disclosure.

(1) Depending on the results of your response to paragraph (b)(1)(i)(A) of this section and the investigation under paragraph (b)(1)(i)(B), we may deny the permit application; and

(2) Refer our finding to the Attorney General or equivalent State office for prosecution under section 518(g) of the Act and § 846.11 of this chapter.

(2) *Review of the applicant's permit history.* (i) We will use AVS and any other available information to review your permit history and the permit history of any person with the ability to control you. Our review will determine how long you or those with the ability to control you or the operation have conducted surface coal mining operations and whether such conduct has been in compliance with applicable requirements.

(ii) If you have 5 years or more experience as a permittee or operator of a surface coal mining operation, you are not subject to additional permit

conditions under § 773.18 unless any person with the ability to control you or the operation is linked to an outstanding violation.

(iii) If we determine from the information provided in the application under § 778.13 of this chapter that none of the persons identified in the application has had any previous mining experience, we will ask you to affirm that neither you nor any person with the ability to control you has mining experience. We will investigate whether any person not identified in the application will control the proposed surface coal mining operation as either an operator or other controller as defined in § 778.5 of this chapter.

(3) *Review of the applicant's compliance history.* (i) *Review of violations.* We will request a report from AVS on your history of compliance with SMCRA whenever there is an application for a permit or revision, renewal, transfer, assignment, or sale of permit rights.

(A) We will rely upon your compliance history, and the history of operations you owned or controlled, to make a permit eligibility finding under section 510(c) of SMCRA, unless there is an indication that the history of persons other than you also should be included.

(B) If you, or any surface coal mining operation you owned or controlled, has an outstanding violation, we may not approve the application unless:

(1) The regulatory authority with jurisdiction over the violation approves a properly executed abatement plan or payment schedule; or

(2) The violation is being abated or is the subject of a good faith administrative or judicial appeal, contesting the validity of the violation; or

(3) The violation is subject to the presumption of NOV abatement under § 773.16(b).

(C) Any application approved with outstanding violations must be conditioned under § 773.17(j).

(D) OSM will serve a preliminary finding of permanent permit ineligibility under 43 CFR 4.1351 on you or an operator if we find that:

(1) You owned or controlled mining operations with a demonstrated pattern of willful violations of the Act and its implementing regulations, and

(2) The violations are of such nature and duration that they result in irreparable damage to the environment so as to indicate your or your operator's intent not to comply with the Act or implementing regulations.

(E) You or your operator may request a hearing under 43 CFR 4.1350 through

4.1356 with the Office of Hearings and Appeals within 30 days of receiving a preliminary finding under paragraph (3)(i)(D) of this section. If you or your operator files a request for a hearing under 43 CFR 4.1350 through 4.1356, the Office of Hearings and Appeals will:

(1) Give written notice of the hearing to you or the operator and

(2) Issue a decision within 60 days of the filing of the request for a hearing.

(F) You or your operator may appeal the decision of the administrative law judge to the Interior Board of Land Appeals under procedures in 43 CFR 4.1271 through 4.1276 within 20 days after you or your operator receives the decision.

(G) You are not eligible for a permit if you or anyone proposing to engage in or carry out operations on the proposed permit has been barred, disqualified, restrained, enjoined, or otherwise prohibited from mining under §§ 773.15(b)(3)(i)(C) or 846.16 of this chapter or by a Federal or State court.

(ii) *Examination of the applicant's controllers.* (A) We ask for an AVS report on your owners or controllers that shows:

(1) If they owned or controlled a surface coal mining operation when a violation notice was issued regarding that operation; and

(2) If the violation remains outstanding.

(B) We will investigate each person and violation to determine whether alternative enforcement action under part 846 of this chapter is appropriate. We will enter the results of each determination or referral into AVS.

(C) If we find that you have less than 5 years experience or have owners or controllers that are linked to outstanding violations:

(1) We will consider you to have insufficient or unsuccessful environmental compliance and

(2) You will be subject to additional permit conditions under § 773.18.

* * * * *

(e) *Final compliance review.* After we determine you are eligible for a permit, but before the permit is issued, we will review any new information submitted or discovered during the permit application review. No more than 3 business days before permit issuance, we will again request a report from AVS on your history of compliance with SMCRA to ensure that you are not currently linked to any outstanding violations.

9. Add § 773.16 to read as follows:

§ 773.16 Permit eligibility determination.

(a) We will determine whether you are eligible for a permit based upon your

permit and compliance history, operations you own or control, and operations you owned or controlled.

(1) If we find you eligible based upon your permit and compliance history and the compliance history of your owners and controllers under § 773.15, then we will determine whether we should impose additional conditions under § 773.18 before permit issuance.

(2) If we find you ineligible, we will send you written notice of our decision. The notice will tell you why you are ineligible and how to challenge a finding on the ability to control a surface coal mining operation.

(b) *Presumption of NOV abatement.* This paragraph applies to a notice of violation (NOV) issued under § 843.12 of this chapter or under a Federal or State program. If the requirements in paragraph (b)(1) of this section are met, we may presume that an NOV is being corrected. We then will add conditions to an approved permit using the presumption of NOV abatement as required under § 773.17(l).

(1) We may presume that an NOV is being corrected to the satisfaction of the agency with jurisdiction over the violation if:

(i) There is no failure-to-abate cessation order; and

(ii) The abatement period for the notice of violation has not yet expired.

(2) The presumption in paragraph (b) of this section does not apply:

(i) If the abatement period has expired;

(ii) If applicants are subject to additional permit conditions under § 773.18;

(iii) Where evidence that the violation is not being abated appears in the permit application or otherwise discovered; or

(iv) If the notice of violation is issued for nonpayment of reclamation fees or civil penalties.

(3) Where the conditions in paragraph (b)(2) of this section apply, we may not approve the application unless you meet one of the criteria under § 773.15(b)(3)(i)(B).

10. In § 773.17 revise paragraph (h) and add paragraphs (i) through (m) to read as follows:

§ 773.17 Permit conditions.

* * * * *

(h) Within 30 days after a cessation order is issued under § 843.11 of this chapter, you, the applicant, must comply with the requirements of this paragraph.

(1) You must submit to us, the regulatory authority, either:

(i) All of the information required from a permit application by § 778.13(c), (e) and (g) of this chapter; or

(ii) If you have already submitted the information required by paragraph (h)(1)(i) of this section:

(A) Any new information needed to correct or update your previous submission; or

(B) A written notification that there has been no change since the last time you submitted the information.

(2) You do not have to make a submission under paragraph (h) of this section if a stay of the cessation order is granted and remains in effect.

(i) We assume that you are a controller under the permit if:

(1) You are the permittee, operator, or another person named in the application; and (2) You are named in the application as having the ability to determine the manner in which the surface coal mining operation is conducted.

(j) All controllers are jointly and severally responsible for compliance with the terms and conditions of the permit and the regulatory program. All controllers are subject to the jurisdiction of the Secretary of the Interior. A breach of their responsibility for compliance with the terms and conditions of the permit and the regulatory program may result in individual liability for a controller.

(k) We may determine at any time that additional persons are controllers. After the permit is issued, if we identify any additional controllers or they are added by you or the operator, the new controller will be subject to the requirement to certify under § 778.13(m) of this chapter.

(l) As applicable, you or the operator must abate or correct any outstanding violation or payment or receive an administrative or judicial decision invalidating the violation.

(m) The permit is subject to any other special permit conditions we determine necessary to ensure compliance with the performance standards and regulations.

11. Add § 773.18 to read as follows:

§ 773.18 Additional permit conditions.

We, the regulatory authority, will include additional permit conditions in any permit issued to you, the applicant, if you have less than 5 years experience in surface coal mining operations, or if your controllers have not demonstrated successful environmental compliance.

(a) If you fail to comply with additional permit conditions under this section, we may find that you are unable or unwilling to comply with the mining and reclamation plan. This finding constitutes adequate reason for us to promptly issue an order for you to show cause why we should not suspend or

revoke the permit under § 846.15 of this chapter.

(b) You must pay all civil penalties assessed under part 845 of this chapter within 30 days of the date of a final order of the Secretary. You must pay all Abandoned Mine Land (AML) reclamation fees under part 870 of this chapter within 30 days of the end of the calendar quarter for which they are due. You must pay AML audit debts within 30 days of the date of the demand letter sent from OSM.

(c) You must take all possible steps to abate any violation within the period set for abatement.

(d) You must maintain continuous and uninterrupted compliance with any provision of an abatement plan or payment schedule or other settlement agreement.

12. Revise § 773.20 to read as follows:

§ 773.20 Improvidently issued permits: General procedures.

(a) *Permit review.* If a regulatory authority believes that it improvidently issued a surface coal mining and reclamation permit, it must review the circumstances under which the permit was issued, using the criteria in paragraph (b) of this section. If we, the regulatory authority, find that the permit was improvidently issued, we will take remedial measures under paragraph (c) of this section.

(b) *Review criteria.* We will find that a surface coal mining and reclamation permit was improvidently issued if:

(1) Under the violations review criteria of the regulatory program at the time the permit was issued:

(i) The permit should not have been issued because of an outstanding violation or a delinquent penalty or fee; or

(ii) The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; or

(iii) You, the applicant, failed to disclose any other relevant information that, if properly disclosed at the time of the initial application, would have made you ineligible; and

(2) The violation, penalty, or fee:

(i) Remains outstanding or delinquent; and

(ii) Is not the subject of a good faith appeal, or of an abatement plan or payment schedule that is being met to the satisfaction of the responsible agency; and

(3) You or any operation owned or controlled by you continues to be responsible for the violation, penalty, or fee.

(c) *Remedial measures.* (1) If we find that a permit was improvidently issued, we will use one or more of the following remedial measures:

(i) Implement a plan for abatement of the violation, establish a schedule for payment of the penalty or fee, or require you to correct the inaccurate information or provide the incomplete information;

(ii) Suspend the permit until:

(A) The violation is corrected to the satisfaction of the regulatory authority or other issuing authority with jurisdiction over the violation; or

(B) The penalty or fee is paid; or

(C) The inaccurate or incomplete information is corrected or provided; or

(iii) Rescind the permit under § 773.21.

(2) If we decide to suspend the permit, we will give you written notice at least 30 days before the suspension is effective. If we decide to rescind the permit, we will issue you a notice under § 773.21. In either case, we will give you the opportunity to request administrative review of the notice under 43 CFR 4.1370 through 4.1377. Our decision will remain in effect during the pendency of the appeal, unless you receive temporary relief under 43 CFR 4.1376.

13. Revise § 773.21 to read as follows:

§ 773.21 Improvidently issued permits: Rescission procedures.

If we, the regulatory authority, elect under § 773.20(c)(1)(iii) to rescind an improvidently issued permit, we will serve you, the permittee, and persons who have the ability to control the operation, a notice of proposed suspension and rescission. The notice will include the reasons for our finding under § 773.20(b) and state that:

(a) *Automatic suspension and rescission.* If we determine that your permit was improvidently issued, after a period of time we specify (but not to exceed 90 days), the permit is automatically suspended. We will rescind your permit within 90 days after the suspension date. However, we will not suspend or rescind your permit if you submit proof, and we find, consistent with the provisions of § 773.25, that:

(1) Our finding under § 773.20(b) was erroneous;

(2) The violation has been abated, the penalty or fee paid, or the information corrected to the satisfaction of the responsible agency;

(3) The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule that is being met to the satisfaction of the responsible agency;

(4) You and all operations owned or controlled by you are no longer responsible for the violation, penalty, fee or for providing the information; or

(5) The information is subject to a pending challenge under § 773.24.

(b) *Cessation of operations.* After a permit suspension or rescission under paragraph (a) of this section, you must cease all surface coal mining operations under the permit, except for violation abatement and for reclamation and other environmental protection measures we require.

14. Revise § 773.22 to read as follows:

§ 773.22 Identifying entities responsible for violations.

If you own or have the ability to control a surface coal mining operation, you have an affirmative duty to comply with the Act, the regulatory program, and the approved permit.

(a) OSM or the State regulatory authority with jurisdiction over the violation will investigate each outstanding violation of the regulatory program to determine the identity of those responsible for preventing and for correcting the violation.

(b) We will designate you in the AVS as a person we may compel to correct the violation through compliance with the Act and applicable laws and regulations if you are an:

(1) Owner;

(2) Controller;

(3) Principal; or

(4) Agent responsible for preventing or ensuring abatement or correction of the violation.

(c) We will enter into AVS all outstanding violation notices issued under the Act and regulatory program no later than 30 days after the abatement or correction period has expired. We will update violation data in AVS to reflect the most recent change in status, such as abatement, correction, termination, and administrative or judicial appeal.

(d) If there is a violation, we will decide whether to pursue the appropriate alternative enforcement action under part 846 of this chapter against you, the operator, or an owner, controller, or agent, to compel correction of the violation. The existence of a performance bond can not be used as the sole basis for our determination that alternative enforcement action is not warranted.

§ 773.23 [Removed]

15. Remove § 773.23.

16. Revise § 773.24 to read as follows:

§ 773.24 Procedures for challenging a finding on the ability to control a surface coal mining operation.

(a) *Who may challenge.* Any person listed as owning or controlling a surface coal mining operation in a pending permit application, or who we find as an owner or controller, may, before certification under § 778.13(m) of this chapter, challenge the listing or finding in accordance with paragraphs (b) through (d) of this section and § 773.25.

(b) *How to challenge.* If you wish to challenge your status in the application or a finding that you have or had the ability to control a surface coal mining operation, you must submit a written explanation of the basis for the challenge to the agency with jurisdiction over any existing violations. Include any supporting evidence and supporting documents with your explanation. If there is no violation, submit your written explanation to the agency with jurisdiction over the pending permit application.

(c) *Written decision.* (1) We will review any information you submit under paragraph (b) of this section and issue a written decision on whether you have the ability to control the relevant surface coal mining operation. The agency issuing the decision will notify you and any regulatory authorities with an interest in the challenge, of the decision and will update, as necessary, the relevant information in AVS.

(2) *Service.* The agency making the decision will serve a copy of the decision on you by certified mail, or by any means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, or the equivalent State counterparts. Service is complete upon delivery of the notice or of the mail and is not incomplete because of a refusal to accept.

(3) *Appeals procedures.* Any person who is or may be adversely affected by a decision under paragraph (c)(1) of this section may appeal OSM's decision to the Department of the Interior's Office of Hearings and Appeals within 30 days of service of the decision in accordance with 43 CFR 4.1380 through 4.1387, or the equivalent State counterparts. The decision will remain in effect during the pendency of an appeal, unless temporary relief is granted in accordance with 43 CFR 4.1386, or the equivalent State counterpart.

(d) *Limitations.* No person, including a permittee or operator, may use these procedures, the procedures in § 773.25, or the procedures in 43 CFR 4.1380 through 4.1387 to challenge the liability of a permittee, operator, or other person

for reclamation fees assessed under Title IV of SMCRA.

17. Revise § 773.25 to read as follows:

§ 773.25 Standards for challenging a finding or decision on the ability to control a surface coal mining operation.

(a) *When do these provisions apply.* The provisions of this section apply whenever you challenge a decision that you have the ability to control a surface coal mining operation under the provisions of §§ 773.20, 773.21, or 773.24 or under the provisions of part 775 of this chapter.

(b) *Agencies responsible.* (1) The State regulatory authority will make a decision on a challenge to a finding on the ability to control surface coal mining operations with respect to a State-issued citation.

(2) OSM will make a decision on a challenge to a finding on the ability to control surface coal mining operations with respect to a Federal violation notice issued under SMCRA.

(3) The regulatory authority (OSM or the State) which processed the application or which issued the permit will make a decision on a challenge to a finding on the ability to control surface coal mining operations not associated with a violation.

(4) The State or Federal agency with jurisdiction over the violation will determine whether the violation has been abated or corrected.

(c) *Evidentiary standards.* (1) In any formal or informal review of a challenge to a finding, the responsible agency will issue a written decision if it determines that the ability to control exists or existed during the relevant period.

(2) When you challenge a finding on your ability to control the relevant surface coal mining operation, you must prove by a preponderance of the evidence, for any relevant time period, that you did not have the ability to control the surface coal mining operation.

(3) In meeting the burden of proof in paragraph (c)(2) of this section, you must present reliable, credible, and substantial evidence and any explanatory materials.

(i) Evidence and supporting material that you present before the responsible agency may include—

(A) Notarized affidavits containing specific facts concerning the duties you performed; the beginning and ending dates of your control of the applicant, permittee, operator, or violator; and the nature and details of any transaction creating or severing the ability to control that person;

(B) Certified copies of corporate minutes, stock ledgers, contracts,

purchase and sale agreements, leases, correspondence, or other relevant company records;

(C) Certified copies of documents filed with or issued by any State, Municipal, or Federal governmental agency;

(D) An opinion of counsel, when supported by: evidentiary materials; a statement by counsel that he or she is qualified to render the opinion; and a statement that counsel has personally and diligently investigated the facts of the matter or, where counsel has not investigated the facts, a statement that the opinion is based upon information which has been supplied to counsel and which is assumed to be true.

(ii) Evidence and supporting material that you present before any administrative or judicial tribunal reviewing the decision of the responsible agency, may include any evidence admissible under the rules of such tribunal.

(d) Following any regulatory authority determination or any decision by an administrative or judicial tribunal reviewing such a determination, the regulatory authority will review the information in AVS to determine if it is consistent with the determination or decision. If it is not, the regulatory authority will promptly revise the information in AVS to reflect the determination or decision.

PART 774—REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

18. Revise the authority citation for part 774 to read as follows:

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

19. Revise § 774.10 to read as follows:

§ 774.10 Information Collection.

(a) Under the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements of this part. Regulatory authorities will use this information to determine if the applicant meets the requirements for revision, renewal, transfer, sale, or assignment of permit rights. Persons must respond to obtain a benefit. A Federal 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 clearance number for this part is 1029-NEW.

(b) We estimate that the public reporting burden for this part will average 32 hours per response, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 210, 1951 Constitution Avenue, 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. Please refer to OMB Control Number 1029-NEW in any correspondence.

20. In § 774.13 add paragraph (e) to read as follows:

§ 774.13 Permit revisions.

* * * * *

(e) *Notice to regulatory authority.* You must report changes in interests required under § 778.13 of this chapter but that do not require our written approval under § 774.17. You must report this type of information to us within 60 days of the change. This type of change includes a change or addition of an officer or other person not identified on the currently approved permit and not requiring certification under § 778.13(m).

21. Revise § 774.17 to read as follows:

§ 774.17 Transfer, assignment, or sale of permit rights.

(a) *Who must obtain approval of a transfer, assignment, or sale of permit rights?*

(1) You, the permittee, must apply to us for a transfer, assignment, or sale of permit rights. You must be able to show that your application complies with the requirements of the regulatory program.

(2) You must obtain our approval for changes—including the change or addition of an operator, officer, owner, other controller, or permittee—by which the rights granted under a permit are transferred, assigned, or sold to a person not identified under the currently approved permit and requiring certification under § 778.13(m) of this chapter.

(b) *What must your application contain?* You must submit an application to us requesting approval of any proposed transfer, assignment, or sale, of rights granted under a permit described in paragraph (a)(2) of this section including—

- (1) Your name, address, and permit number;
- (2) A brief description of the proposed action requiring approval;
- (3) The legal, financial, compliance, and related information and violation

information required under §§ 778.13 and 778.14 of this chapter for the person proposed to receive permit rights by way of the transfer, assignment, or sale; and

(4) The bonding company's written acceptance of those gaining permit rights.

(c) *How will the regulatory authority review and approve applications for transfer, assignment, or sale?*

(1) We, the regulatory authority, will issue written findings either approving or denying any application for a transfer, assignment, or sale of rights granted under a permit described in paragraph (a)(2) of this section.

(2) We will evaluate your application for a transfer, assignment, or sale to determine whether a new permit or bond is required under the regulatory program requirements.

(3) We will impose additional permit conditions under § 773.18 of this chapter, if the permit is not already subject to the additional conditions and if the transfer, assignment, or sale involves a person responsible for outstanding violations or an operator with owners or controllers responsible for outstanding violations.

(4) We will disapprove the permittee's request for a transfer, assignment, or sale of rights under the permit, if the applicant is ineligible for a permit under §§ 773.15(b)(2) or 773.16 of this chapter.

(5) We will disapprove the permittee's request for a transfer, assignment, or sale of rights under the permit, if the person, operator, or any owner or controller of the person or operator, proposed to receive rights under the permit is enjoined or otherwise prohibited from mining under § 846.16 of this chapter or by a Federal or State court.

(d) *Successor in interest.* (1) A permittee cannot give up all rights granted under an existing permit until the successor in interest to the existing permit obtains a new permit.

(2) *Continued operations under existing permit.* (i) In order for the successor in interest to continue uninterrupted operations under the existing permit, the permittee must obtain our written approval of the transfer, assignment, or sale of permit rights and the successor in interest must submit the following:

(A) The legal, financial, compliance, and related information and violation information required under §§ 778.13 and 778.14 of this chapter;

(B) A performance bond, or proof of other guarantee, or obtain the bond coverage of the original permittee, as required by subchapter J of this title; and

(C) A signed and notarized written statement assuming the liability and reclamation responsibilities of the existing permit.

(ii) We will review the information submitted by the successor in interest under paragraph (d)(2)(i)(A) of this section using the criteria in §§ 773.15(b)(2) and 773.16 of this chapter.

(iii) If the successor in interest receives preliminary written approval, mining operations may commence and continue for up to 30 days. The successor must:

(A) Conduct the surface coal mining and reclamation operations in full compliance with the Act and the regulatory program;

(B) Conduct the surface coal mining and reclamation operations under the terms and conditions of the existing permit and any additional terms or conditions that may be imposed by us;

(C) Meet any other requirements specified by us; and

(D) Submit an application for a new permit within 30 days of succeeding to such interest.

(iv) If the successor submits a complete permit application under subchapter G of this title within 30 days of succeeding to such interest and meets the other requirements under paragraph (d)(2)(iii) of this section, then the successor can continue operations until we make the decision to either approve or deny the application for a permit. If we deny the successor's permit application, then the successor must cease operations.

(3) *Advertisement.* The successor in interest must advertise the filing of the permit application in a newspaper of general circulation in the local area of the operation. The advertisement must indicate the name and address of the applicant, permittee, and regulatory authority where comments may be sent, the permit number, mine name generally associated with the permit, geographic location of the permit, and the date the regulatory authority requires receipt of comments.

(4) *Public participation.* Any person having an interest which is or may be adversely affected by a decision on the successor in interest's application, including an official of any Federal, State, or local government agency, may submit written comments on the application to the regulatory authority within the time specified by the regulatory authority and announced in the advertisement.

(5) We will not release the previous permittee from responsibilities for any affected or disturbed area of the permit until the successor in interest engages in

surface coal mining operations which substantially re-affect or re-disturb the areas previously mined and not before the successor's application for a new permit is approved. Until such time, both the previous permittee and its successor are responsible for violations created after the successor begins surface coal mining operations.

(6) The successor in interest's replacement of the previous permittee's performance bond needed under paragraph (d)(2)(ii) of this section does not form the basis for a release of the previous permittee's bond under § 800.40 of this chapter. Bond release for the previous permittee is a separate consideration from the issuance of a new permit to its successor.

(e) *Notification.* (1) We will notify the permittee, the successor, the new operator, or other person gaining permit rights, and commenters, of our findings.

(2) The person gaining permit rights must immediately notify us when the transfer, assignment, or sale of permit rights or successor in interest transaction is complete.

(3) We will update the relevant records in the AVS with the approved transfer, assignment, or sale or successor in interest information within 30 days of approval.

PART 778—PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

22. Revise the authority citation for part 778 to read as follows:

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

23. In part 778, add § 778.5 to read as follows:

§ 778.5 Applicability and definitions.

(a) *Applicability.* This part applies to any person who engages in or carries out mining operations as an owner or controller. An owner or controller includes, but is not limited to, the following:

(1) The president, other officers, directors, agents or persons performing functions similar to a director.

(2) Those persons who have the ability to direct the day-to-day business of the surface coal mining operation.

(3) The permittee, or an operator if different from the permittee.

(4) Partners in a partnership, the general partner in a limited partnership, or the participants, members, or managers of a limited liability company.

(5) Persons owning the coal (through lease, assignment, or other agreement) and retaining the right to receive or direct delivery of the coal.

(6) Persons who make the mining operations possible by contribution (to the permittee or operator) of capital or other resources necessary for mining to commence or for operations to continue at the site. Examples of resources include a personal guarantee to obtain the reclamation bond, the assumption of responsibility for the liability insurance, a captive coal supply contract, and mining equipment.

(7) Persons who control the cash flow or can cause the financial or real property assets of a corporate permittee or operator to be employed in the mining operation or distributed to creditors.

(8) Persons who cause operations to be conducted in anticipation of their desires or who are the animating force behind the conduct of operations.

(b) For the purposes of this subchapter:

(1) *Ownership* means holding an interest in a sole proprietorship, being a general partner in a partnership, owning 50 percent or more of the stock in a corporation, or having the right to use, enjoy, or transmit to others the rights granted under a permit.

(2) *Control* means to own, manage, or supervise surface coal mining and reclamation operations, as either a principal or an agent, such that the person has the ability, alone or in concert with others, to influence or direct the manner in which surface coal mining operations are conducted.

24. Revise § 778.10 to read as follows:

§ 778.10 Information collection.

(a) Under the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements of this part. Section 507(b) of SMCRA provides that persons applying for a permit to conduct surface coal mining operations must submit to the regulatory authority certain information regarding the applicant and affiliated entities, their compliance status and history, property ownership and other property rights, right of entry, liability insurance, the status of unsuitability claims, and proof of publication of a newspaper notice. The regulatory authority uses this information to ensure that all legal, financial and compliance requirements are satisfied before issuance of a permit. Persons seeking to conduct surface coal mining operations must respond to obtain a benefit. A Federal 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 clearance number for this part is 1029-NEW.

(b) We estimate that the public reporting and record keeping burden for this part averages 25 hours per response, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these information collection and record keeping requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, N.W., 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. Please refer to OMB Control Number 1029-NEW in any correspondence.

25. Revise § 778.13 to read as follows:

§ 778.13 Legal identity and identification of interests.

Your permit application must contain the following information (if you have existing permits, paragraph (o) of this section applies to you):

(a) A statement as to whether you are a corporation, partnership, single proprietorship, association, or other business entity.

(b) The name, address, telephone number, and taxpayer identification number of the:

(1) Applicant;

(2) Your resident agent who will accept service of process;

(3) Operator (if different from applicant);

(4) Person(s) responsible for submitting the Coal Reclamation Fee Report (OSM-1) and for remitting the reclamation fee payment to OSM; and

(5) All other persons who will engage in or carry out surface coal mining operations as an owner or controller on the permit.

(c) You must provide the information required by paragraphs (c)(1) through (3) of this section.

(1) You must provide for every person (except a publicly traded corporation) specified in paragraph (c)(3) of this section:

(i) The person's name, address, and taxpayer identification number;

(ii) The person's ownership or control relationship to you, including the percentage of ownership and location in the organizational structure; and

(iii) The title of the person's position, the date that the person assumed the position, and, when submitted under

§ 773.17(h) of this chapter, the date of departure from the position.

(2) If a person specified in paragraph (c)(3) of this section is a publicly traded corporation, you must provide the corporation's:

- (i) Name;
- (ii) Address; and
- (iii) Taxpayer identification number.

(3) You must provide the information required by paragraph (c)(1) or (2) of this section for every:

- (i) Officer;
- (ii) Director;
- (iii) Person performing a function similar to a director;
- (iv) Person who owns or controls the applicant or the operator under the definitions of "ownership" and "control" in § 778.5, if that person is different from the applicant; and
- (v) Person who owns 10 to 50 percent of the applicant or the operator.

(d) You don't need to report any owner that is a corporation not licensed to do business in any State or territory of the United States.

(e) For each of your or your operator's partners or principal shareholders, all names under which those persons operate or previously operated a surface coal mining and reclamation operation in the United States within the 5 years preceding the date of the application.

(f) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application either you or your operator filed in any State in the United States.

(g) For any surface coal mining operation permit held by you or your operator during the 5 years preceding the date of the application, the operation's name, address, identifying numbers, including taxpayer identification number, Federal or State permit number and MSHA number, and the regulatory authority.

(h) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.

(i) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(j) The Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures that require MSHA approval.

(k) A statement of all lands, interests in lands, options, or pending bids on interests you held or made for lands contiguous to the area described in the

permit application. If you request, we will hold as confidential any information required by this paragraph which is not on public file under State law as provided under § 773.13(d)(3)(ii) of this chapter.

(l) After we notify you that we have approved your application, but before the permit is issued, you must, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under paragraphs (a) through (k) of this section.

(m) Before approval, the persons that will engage in or carry out surface coal mining operations as owners or controllers of the proposed operation (e.g., those persons identified under paragraph (c) of this section) must certify that they have the ability to control and that they are under the jurisdiction of the Secretary for the purposes of compliance with the terms and conditions of the permit and the requirements of the regulatory program.

(n) You must submit the information required by this section and § 778.14 in the format that we prescribe.

(o) If you have previously applied for permits and the data required under this section is in AVS, you may certify to us that the information in AVS is complete, accurate, and up to date. Or, if only some of the information is different, tell us what to change.

(p) We may establish a central file to house your legal identity information, rather than place duplicate information in each of your permit application files.

26. Revise § 778.14 to read as follows:

§ 778.14 Violation information.

You, the applicant, must include the following information in your permit application:

(a) A statement of whether you or any subsidiary, affiliate, or persons controlled by or under common control with you has:

(1) Had a Federal or State coal mining permit suspended or revoked in the five years preceding the date of submission of the application; or

(2) Forfeited a performance bond or similar security deposited in lieu of bond.

(b) A brief explanation of the facts involved if any suspension, revocation, or forfeiture referred to in paragraphs (a)(1) and (a)(2) of this section has occurred, including:

(1) Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

(2) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

(3) The current status of the permit, bond, or similar security involved;

(4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(5) The current status of the proceedings.

(c) A list of all violation notices you received during the three-year period preceding the application date, and a list of all outstanding violation notices you received before the date of the application for any surface coal mining operation you owned or controlled. For each violation notice reported, you must include the following information, as applicable:

(1) Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the issue date of the violation notice, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

(2) A brief description of the violation alleged in the notice;

(3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in paragraph (c) of this section to obtain administrative or judicial review of the violation;

(4) The current status of the proceedings and of the violation notice; and

(5) The actions, if any, taken by any person identified in paragraph (c) of this section to abate the violation.

(d) After we notify you that we have approved your application, but before we issue the permit, you must, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under this section.

PART 842—FEDERAL INSPECTIONS AND MONITORING

27. Revise the authority citation for part 842 to read as follows:

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

28. In § 842.11, revise paragraph (e)(3)(i) to read as follows:

§ 842.11 Federal inspections and monitoring.

* * * * *

(e) * * *

(3) * * *

(i) Is taking action to ensure that the permittee and operator will be precluded from receiving future permits

while violations continue at the site;
and

* * * * *

PART 843—FEDERAL ENFORCEMENT

29. Revise the authority citation for part 843 to read as follows:

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

§ 843.5 [Removed]

30. Remove § 843.5.

31. In § 843.11, revise paragraph (g) to read as follows:

§ 843.11 Cessation orders.

* * * * *

(g) Within 60 days after issuing a cessation order, OSM will notify in writing any person who has been identified under §§ 773.17(h) and 778.13(c) of this chapter as an owner or controller of the operation that the cessation order was issued.

§ 843.13 [Removed]

32. Remove § 843.13.

33. Revise § 843.21 to read as follows:

§ 843.21 Procedures for improvidently issued State permits.

(a) *Initial notice.* If OSM believes that a State surface coal mining and reclamation permit meets the criteria for an improvidently issued permit in § 773.20(b) of this chapter, or the State program equivalent, and the State failed to take appropriate action on the permit under State program equivalents of §§ 773.20 and 773.21, OSM will issue to the State and the permittee an initial notice stating in writing the reasons for that belief.

(b) *State response.* Within 30 days of the date that OSM notifies the State under paragraph (a) of this section, the State must demonstrate to OSM in writing that either:

(1) The permit does not meet the criteria of § 773.20(b) of this chapter or the State program equivalent; or

(2) The State is in compliance with the State program equivalents of §§ 773.20 and 773.21.

(c) *Ten-day notice.* If OSM finds that the State has failed to make the demonstration required by paragraph (b) of this section, OSM will issue to the State a 10-day notice stating in writing the reasons for that finding and requesting that within 10 days the State take appropriate action under the State program equivalents of §§ 773.20 and 773.21 of this chapter.

(d) *Federal enforcement.* (1) OSM will take appropriate remedial action after 10 days from the date OSM issues a 10-day notice under paragraph (c) of this section, if OSM finds that the State has failed to:

(i) Take appropriate action under the State program equivalents of §§ 773.20 and 773.21 of this chapter; or

(ii) Show good cause for not taking action under State program equivalents of §§ 773.20 and 773.21.

(2) Remedial action may include issuing to the permittee or the operator a notice of violation requiring that by a specified date:

(i) All mining operations must cease; and

(ii) Reclamation of all areas for which a reclamation obligation exists must commence or continue.

(3) OSM will not take remedial action if:

(i) Any violation, penalty, or fee on which the notice of violation was based is abated or paid;

(ii) An abatement plan or payment schedule is entered into;

(iii) All inaccurate or incomplete information questions are resolved; or

(iv) The permittee and the operator, and all operations owned or controlled by the permittee and the operator, are no longer responsible for the violation, penalty, fee, or information.

(4) Under this paragraph, good cause does not include the absence of State program equivalents of §§ 773.20 and 773.21.

(e) *Remedies to notice of violation.* Upon receipt from any person of information concerning the issuance of a notice of violation under paragraph (d) of this section, OSM will review the information and:

(1) Vacate the notice of violation if it resulted from an erroneous conclusion under this section or ownership and control has been refuted; or

(2) Terminate the notice of violation if:

(i) All violations have been abated, all penalties or fees have been paid, and all informational questions have been resolved;

(ii) You, or any operation owned or controlled by you, have filed and are pursuing a good faith appeal of the violation, penalty, fee, or information request, or have entered into and are complying with an abatement plan or payment schedule to the satisfaction of the responsible agency; or

(iii) You, and all operations owned or controlled by you, are no longer responsible for the violation, penalty, fee, or requested information.

(f) *No civil penalty.* OSM will not assess a civil penalty for a notice of violation issued under this section.

§ 843.24 [Removed]

34. Remove § 843.24.

35. Revise part 846 to read as follows:

PART 846—ALTERNATIVE ENFORCEMENT

Sec.

846.1 Scope.

846.5 Definitions.

846.11 Criminal penalties.

846.12 Individual civil penalties.

846.14 Suspension or revocation of permits: Pattern of violations.

846.15 Suspension or revocation of permits: Failure to comply with a permit condition.

846.16 Civil actions for relief.

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

§ 846.1 Scope.

This part governs the use of measures provided for in the Act at sections 201(c)(1), 510(c), 518(e), 518(f), 518(g), 521(a)(4), and 521(c), that we collectively call "alternative enforcement" measures or actions that we may use to compel compliance with any provision of the Act. These measures are available to us whenever any person engaging in or carrying out surface coal mining operations has allowed a violation notice to remain outstanding and has thus failed to comply with the provisions of the Act and its implementing regulations. Whenever we make a determination, finding, or conviction under these provisions, we will designate the person determined, found, or convicted in the AVS.

§ 846.5 Definitions.

Unwarranted failure to comply means the failure of a permittee, operator, agent, or owner or controller of a permittee or operator—

(1) To prevent the occurrence of any violation of his or her permit or any requirement of the Act or regulations due to indifference, lack of diligence, or lack of reasonable care, or

(2) To abate any violation of such permit or any requirement of the Act or regulations due to indifference, lack of diligence, or lack of reasonable care.

Violation, failure, or refusal means—

(1) A violation of a condition of a permit issued under a Federal program, a Federal lands program, Federal enforcement under section 502 of the Act, or Federal enforcement of a State program under section 521 of the Act; or

(2) A failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under sections 518(b) or 703 of the Act.

§ 846.11 Criminal penalties.

(a) We may pursue criminal sanctions against any person who willfully and knowingly:

- (1) Violates a condition of a permit, or
- (2) Fails or refuses to comply with:
 - (i) Any order issued under section 521 or 526 of the Act; or
 - (ii) Any order incorporated into a final decision issued by the Secretary.
- (3) Makes any false statement, representation, or certification, or fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the regulatory program or any order or decision issued by the Secretary under the Act.

(b) We may pursue criminal sanctions against a permittee, operator, or any owner, controller, principal, or agent of the permittee or operator if the violation, failure, or refusal under paragraph (a) of this section remains uncorrected for more than 30 days after—

- (1) Suspension or revocation of a permit under § 846.14; or
- (2) Issuance of a violation notice to an unpermitted operation.

(c) Any person convicted under this section may be subject to punishment by a fine of not more than \$10,000 or imprisonment of not more than one year, or both.

§ 846.12 Individual civil penalties.

(a) *When an individual civil penalty may be assessed.* (1) Except as provided in paragraph (a)(2) of this section, we may assess an individual civil penalty against any corporate director, officer, or agent of a corporate permittee or operator who knowingly and willfully authorized, ordered, or carried out a violation, failure, or refusal.

(2) We will not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until we issue a cessation order to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

(b) *Amount of individual civil penalty.* (1) In determining the amount of an individual civil penalty assessed under paragraph (a) of this section, we will consider the criteria in section 518(a) of the Act, including:

- (i) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;
- (ii) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable

harm to the environment and any hazard to the health and safety of the public; and

(iii) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notification of the violation, failure, or refusal.

(2) The penalty will not exceed \$5,000 for each violation. We may assess a separate individual civil penalty for each day the violation, failure, or refusal continues, from the date of service of the underlying notice of violation, cessation order, or other order incorporated in a final decision issued by the Secretary, until abatement or compliance is achieved.

(c) *Procedure for assessment of individual civil penalty.* (1) *Notice.* We will serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(2) *Final order and opportunity for review.* The notice of proposed individual civil penalty assessment becomes a final order of the Secretary 30 days after service upon the individual unless:

(i) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Phone: 703-235-3800), in accordance with 43 CFR 4.1300 through 4.1309; or

(ii) We and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(3) *Service.* For purposes of this section, service must be performed on the individual to be assessed an individual civil penalty by certified mail, or by any alternative means consistent with the rules governing service of a summons or complaint under Rule 4 of the Federal Rules of Civil Procedure. Service is complete upon tender of the notice of proposed assessment and included information or of the certified mail and is not incomplete because of refusal to accept.

(d) *Payment of penalty.* (1) *No abatement or appeal.* If a notice of proposed individual civil penalty becomes a final order in the absence of a petition for review or abatement

agreement, the penalty is due upon issuance of the final order.

(2) *Appeal.* If an individual named in the notice of proposed individual civil penalty assessment files a petition for review in accordance with 43 CFR 4.1300 through 4.1309, the penalty is due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(3) *Abatement agreement.* Where we and the corporate permittee or individual have agreed in writing on a plan for the abatement of, or compliance with, the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from us stating that the penalty is due on the date of the final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

(4) *Delinquent payment.* Any delinquent penalty is subject to interest beginning 30 days after the final order assessing a civil penalty is issued.

(i) Interest will be charged at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal government, under Treasury Financial Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the **Federal Register**.

(ii) Interest on unpaid penalties will run from the date payment first was due until the date of payment.

(iii) Failure to pay overdue penalties may result in one or more of the actions specified in §§ 870.15(e)(1) through (e)(5) of this chapter.

(iv) Delinquent penalties are subject to late payment penalties specified in § 870.15(f) and processing and handling charges in § 870.15(g).

§ 846.14 Suspension or revocation of permits: Pattern of violations.

(a) *Issuing an order.* (1) We will issue an order to you, requiring you to show cause why your permit and right to mine under the Act should not be suspended or revoked, if we determine that:

(i) A pattern of violations of any requirements of the Act, this chapter, the applicable program, or any permit condition required by the Act exists or has existed; and

(ii) The violations were caused by you willfully or through unwarranted failure to comply with those requirements or conditions.

(2) We will attribute to you violations by any person conducting surface coal mining operations on your behalf,

unless you establish that the violations were:

(i) Acts of deliberate sabotage or in direct contravention of your expressed orders, or

(ii) Willful and knowing violations of a contract provision which you actively tried to prevent.

(3) If we determine that a pattern of violations exists, we will promptly file a copy of any order to show cause with the Office of Hearings and Appeals.

(4) We may determine that a pattern of violations exists or has existed after considering the circumstances, including:

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this chapter, the applicable program, or the permit;

(ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this chapter, the applicable program, or the permit; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(5) We will promptly review your history of violations or the history of violations of an operator who has been cited for violations of the same or related requirements of the Act, this chapter, the applicable program, or the permit. If we determine that a pattern of violations exists or has existed, we will issue an order to show cause as provided in paragraph (a)(1) of this section.

(6) In determining whether a pattern exists or has existed, we will consider only violations issued as a result of:

(i) Enforcement of the provisions of Title IV of the Act, or a Federal program or a Federal lands program under Title V;

(ii) Federal inspection during the interim program and before the applicable State program was approved under sections 502 or 504 of the Act; or

(iii) Federal enforcement of a State program in accordance with sections 504(b) or 521(b) of the Act.

(b) *Hearing and order.* (1) If you file an answer to the show cause order and request a hearing under 43 CFR 4.1190 through 4.1196, a public hearing will be held as set forth in those sections.

(2) Within the time limits in 43 CFR 4.1190 through 4.1196, the Office of Hearings and Appeals will issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the Office of Hearings and Appeals revokes or suspends the permit and your right to mine under the Act, you must

immediately cease surface coal mining operations on the permit.

(i) If the permit and the right to mine under the Act are revoked, you must complete reclamation within the time specified in the order.

(ii) If the permit and the right to mine under the Act are suspended, you must complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

(c) *Review of violations.* Whenever you fail to abate a violation contained in a notice of violation or cessation order within the prescribed abatement period, we will review your history of violations to determine whether a pattern of violations exists under this section, and will issue an order to show cause as appropriate.

(d) *Service of show cause orders.* For purposes of this section and § 846.15, we must serve you and/or the operator, or owner, controller, principal, or agent of the permittee or operator by certified mail, or by any alternative means consistent with the rules governing service of a summons or complaint under Rule 4 of the Federal Rules of Civil Procedure. Service is complete upon delivery of the order or of the certified mail and is not considered incomplete because of a person's refusal to accept.

§ 846.15 Suspension or revocation of permits: Failure to comply with a permit condition.

(a) *General.* If we find that you, or your operator, or any owner, controller, principal, or agent of you or your operator, have failed to comply with any condition imposed on an approved permit, then we may order you to show cause why we should not suspend or revoke the permit.

(b) *Additional permit conditions.* We will order you to show cause why the permit should not be suspended or revoked if:

(1) You have less than 5 years experience, or have controllers without demonstrated successful environmental compliance; and

(2) We find that you have failed to comply with additional permit conditions imposed on an approved permit under § 773.18(a) of this chapter, and find you are unable or unwilling to comply with the mining and reclamation plan.

(c) *Hearing and order.* (1) If you file an answer to the show cause order and request a hearing under 43 CFR part 4, subpart L, then a public hearing may be provided as set forth in that subpart.

(2) If the Office of Hearings and Appeals revokes the permit, then you must immediately cease surface coal

mining operations on the permit and complete reclamation within the time specified in the order.

(3) If the Office of Hearings and Appeals suspends the permit, then you must abate all conditions, practices, or violations as specified in the order.

(4) If your right to engage in or carry out surface coal mining operations is suspended or revoked, then you are prohibited from owning, controlling, or serving as a principal or agent for any surface coal mining operations as specified in the order.

(d) *Service.* The provisions for service set out in § 846.14 govern service under this section.

§ 846.16 Civil actions for relief.

(a) Under section 521(c) of the Act, we will request the Attorney General to institute civil action for relief whenever you or your operator, or any owner, controller, principal, or agent of you or your operator are found to have met the criteria in this section.

(1) We will request action under this section whenever you or your operator, or any owner, controller, principal, or agent of you or your operator are found to have—

(i) Violated or failed or refused to comply with any order or decision issued by OSM or the State regulatory authority with jurisdiction under the Act; or

(ii) Interfered with, hindered, or delayed the agency with jurisdiction in carrying out the provisions of the Act or its implementing regulations; or

(iii) Refused to admit our authorized representative onto the mine; or

(iv) Refused to allow inspection of the mine by our authorized representative; or

(v) Refused to furnish any information or report that we have requested; or

(vi) Refused to allow access to, and copying of, such records as we determine necessary to carry out the provisions of the Act and its implementing regulations.

(2) Civil action for relief includes a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the surface coal mining operation is located or in which you have your principal office.

(b) Temporary restraining orders will be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure, as amended.

(c) Any relief the court grants to enforce an order under paragraph (a)(1)(i) of this section will continue in effect until completion or final termination of all proceedings for

review of such order under the Act or its implementing regulations unless, beforehand, the district court granting such relief sets aside or modifies the order.

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3 (1997 Compilation and Parts 100 and 101)	(869-034-00002-9)	19.00	¹ Jan. 1, 1998
4	(869-034-00003-7)	7.00	⁵ Jan. 1, 1998
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200-End	(869-034-00097-5)	17.00	6 Apr. 1, 1997	266-299	(869-034-00151-3)	33.00	July 1, 1998
28 Parts:				300-399	(869-034-00152-1)	26.00	July 1, 1998
0-42	(869-034-00098-3)	36.00	July 1, 1998	400-424	(869-034-00153-0)	33.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998	425-699	(869-034-00154-8)	42.00	July 1, 1998
29 Parts:				700-789	(869-034-00155-6)	41.00	July 1, 1998
0-99	(869-034-00100-9)	26.00	July 1, 1998	790-End	(869-034-00156-4)	22.00	July 1, 1998
100-499	(869-034-00101-7)	12.00	July 1, 1998	41 Chapters:			
500-899	(869-034-00102-5)	40.00	July 1, 1998	1, 1-1 to 1-10		13.00	³ July 1, 1984
900-1899	(869-034-00103-3)	20.00	July 1, 1998	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	³ July 1, 1984
1900-1910 (§§ 1900 to 1910.999)	(869-034-00104-1)	44.00	July 1, 1998	3-6		14.00	³ July 1, 1984
1910 (§§ 1910.1000 to end)	(869-034-00105-0)	27.00	July 1, 1998	7		6.00	³ July 1, 1984
1911-1925	(869-034-00106-8)	17.00	July 1, 1998	8		4.50	³ July 1, 1984
1926	(869-034-00107-6)	30.00	July 1, 1998	9		13.00	³ July 1, 1984
1927-End	(869-034-00108-4)	41.00	July 1, 1998	10-17		9.50	³ July 1, 1984
30 Parts:				18, Vol. I, Parts 1-5		13.00	³ July 1, 1984
1-199	(869-034-00109-2)	33.00	July 1, 1998	18, Vol. II, Parts 6-19		13.00	³ July 1, 1984
200-699	(869-034-00110-6)	29.00	July 1, 1998	18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
700-End	(869-034-00111-4)	33.00	July 1, 1998	19-100		13.00	³ July 1, 1984
31 Parts:				1-100	(869-034-00157-2)	13.00	July 1, 1998
0-199	(869-034-00112-2)	20.00	July 1, 1998	101	(869-034-00158-1)	37.00	July 1, 1998
200-End	(869-034-00113-1)	46.00	July 1, 1998	102-200	(869-034-00158-9)	15.00	July 1, 1998
32 Parts:				201-End	(869-034-00160-2)	13.00	July 1, 1998
1-39, Vol. I		15.00	² July 1, 1984	42 Parts:			
1-39, Vol. II		19.00	² July 1, 1984	*1-399	(869-034-00161-1)	34.00	Oct. 1, 1998
1-39, Vol. III		18.00	² July 1, 1984	400-429	(869-032-00161-8)	35.00	Oct. 1, 1997
1-190	(869-034-00114-9)	47.00	July 1, 1998	430-End	(869-032-00162-6)	50.00	Oct. 1, 1997
191-399	(869-032-00115-4)	51.00	July 1, 1997	43 Parts:			
400-629	(869-034-00116-5)	33.00	July 1, 1998	1-999	(869-032-00163-4)	31.00	Oct. 1, 1997
630-699	(869-034-00117-3)	22.00	July 1, 1998	1000-end	(869-032-00164-2)	50.00	Oct. 1, 1997
700-799	(869-034-00118-1)	26.00	July 1, 1998	44	(869-032-00165-1)	31.00	Oct. 1, 1997
800-End	(869-034-00119-0)	27.00	July 1, 1998	45 Parts:			
33 Parts:				1-199	(869-032-00166-9)	30.00	Oct. 1, 1997
1-124	(869-034-00120-3)	29.00	July 1, 1998	200-499	(869-032-00167-7)	18.00	Oct. 1, 1997
125-199	(869-034-00121-1)	38.00	July 1, 1998	500-1199	(869-032-00168-5)	29.00	Oct. 1, 1997
200-End	(869-034-00122-0)	30.00	July 1, 1998	1200-End	(869-032-00169-3)	39.00	Oct. 1, 1997
34 Parts:				46 Parts:			
1-299	(869-034-00123-8)	27.00	July 1, 1998	1-40	(869-032-00170-7)	26.00	Oct. 1, 1997
300-399	(869-034-00124-6)	25.00	July 1, 1998	41-69	(869-032-00171-5)	22.00	Oct. 1, 1997
400-End	(869-034-00125-4)	44.00	July 1, 1998	*70-89	(869-034-00173-4)	8.00	Oct. 1, 1998
35	(869-034-00126-2)	14.00	July 1, 1998	90-139	(869-032-00173-1)	27.00	Oct. 1, 1997
36 Parts:				140-155	(869-032-00174-0)	15.00	Oct. 1, 1997
1-199	(869-034-00127-1)	20.00	July 1, 1998	156-165	(869-032-00175-8)	20.00	Oct. 1, 1997
200-299	(869-034-00128-9)	21.00	July 1, 1998	166-199	(869-032-00176-6)	26.00	Oct. 1, 1997
300-End	(869-034-00129-7)	35.00	July 1, 1998	200-499	(869-032-00177-4)	21.00	Oct. 1, 1997
37	(869-034-00130-1)	27.00	July 1, 1998	*500-End	(869-034-00179-3)	16.00	Oct. 1, 1998
38 Parts:				47 Parts:			
0-17	(869-034-00131-9)	34.00	July 1, 1998	0-19	(869-032-00179-1)	34.00	Oct. 1, 1997
18-End	(869-034-00132-7)	39.00	July 1, 1998	20-39	(869-032-00180-4)	27.00	Oct. 1, 1997
39	(869-034-00133-5)	23.00	July 1, 1998	40-69	(869-032-00181-2)	23.00	Oct. 1, 1997
40 Parts:				70-79	(869-032-00182-1)	33.00	Oct. 1, 1997
1-49	(869-034-00134-3)	31.00	July 1, 1998	80-End	(869-032-00183-9)	43.00	Oct. 1, 1997
50-51	(869-034-00135-1)	24.00	July 1, 1998	48 Chapters:			
52 (52.01-52.1018)	(869-034-00136-0)	28.00	July 1, 1998	1 (Parts* 1-51)	(869-034-00185-8)	51.00	Oct. 1, 1998
52 (52.1019-End)	(869-034-00137-8)	33.00	July 1, 1998	1 (Parts 52-99)	(869-032-00185-5)	29.00	Oct. 1, 1997
53-59	(869-034-00138-6)	17.00	July 1, 1998	2 (Parts 201-299)	(869-032-00186-3)	35.00	Oct. 1, 1997
60	(869-034-00139-4)	53.00	July 1, 1998	3-6	(869-032-00187-1)	29.00	Oct. 1, 1997
61-62	(869-034-00140-8)	18.00	July 1, 1998	7-14	(869-032-00188-0)	32.00	Oct. 1, 1997
63	(869-034-00141-6)	57.00	July 1, 1998	15-28	(869-032-00189-8)	33.00	Oct. 1, 1997
64-71	(869-034-00142-4)	11.00	July 1, 1998	29-End	(869-032-00190-1)	25.00	Oct. 1, 1997
72-80	(869-034-00143-2)	36.00	July 1, 1998	49 Parts:			
81-85	(869-034-00144-1)	31.00	July 1, 1998	1-99	(869-032-00191-0)	31.00	Oct. 1, 1997
86	(869-034-00144-9)	53.00	July 1, 1998	100-185	(869-032-00192-8)	50.00	Oct. 1, 1997
87-135	(869-034-00146-7)	47.00	July 1, 1998	186-199	(869-032-00193-6)	11.00	Oct. 1, 1997
136-149	(869-034-00147-5)	37.00	July 1, 1998	200-399	(869-032-00194-4)	43.00	Oct. 1, 1997
150-189	(869-034-00148-3)	34.00	July 1, 1998	400-999	(869-032-00195-2)	49.00	Oct. 1, 1997
190-259	(869-034-00149-1)	23.00	July 1, 1998	1000-1199	(869-032-00196-1)	19.00	Oct. 1, 1997
260-265	(869-034-00150-9)	29.00	July 1, 1998	1200-End	(869-032-00197-9)	14.00	Oct. 1, 1997
				50 Parts:			
				1-199	(869-032-00198-7)	41.00	Oct. 1, 1997
				200-599	(869-032-00199-5)	22.00	Oct. 1, 1997
				600-End	(869-032-00200-2)	29.00	Oct. 1, 1997

Title	Stock Number	Price	Revision Date
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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

⁵ No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

⁶ No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.